



Comments on the New York City Department of Education's Proposed Changes to the New York City Discipline Code for the 2019-2020 School Year

Thank you for the opportunity to comment on the proposed changes to the Citywide Behavioral Expectations to Support Student Learning (“discipline code” or “code”) for the 2019-2020 school year. For almost 50 years, Advocates for Children of New York (“AFC”) has worked to ensure access to a high-quality education for New York students who face barriers to academic success, focusing on students of color and from low-income backgrounds. Every day, our attorneys and advocates assist students who have been removed from class or suspended from school, working with families and schools to help students receive the supports and interventions they need to remain in school. AFC is a member of the Dignity in Schools Campaign New York (“DSC-NY”) – a coalition of youth, parents, educators, and advocates dedicated to shifting the culture of New York City schools away from punishment and exclusion and towards more positive approaches to school discipline and safety. In addition, AFC has been a member of the Mayor’s Leadership Team on School Climate and Discipline, which was established to develop meaningful reforms to improve school climate through alternatives to exclusionary, punitive discipline and school policing.

The New York Civil Liberties Union (“NYCLU”), the state affiliate of the American Civil Liberties Union, is a not-for-profit, non-partisan organization with nine offices across New York state and more than 200,000 members and supporters. The NYCLU’s mission is to defend and promote the fundamental principles, rights, and constitutional values embodied in the Bill of Rights of the U.S. Constitution and the Constitution of the State of New York. For decades, we have been a key player in education advocacy in New York. In 2018, we established the Education Policy Center, a first-of-its-kind project for the ACLU national network, dedicated to ensuring New York’s public schools live up to their promise as incubators of democratic ideals.

We commend the New York City Department of Education (“DOE”) for proposing significant changes to the discipline code coupled with investments in citywide restorative practices and social-emotional learning, more social workers, and limits on policing students in school. Many of the changes proposed reflect the recommendations that AFC, and the many students, parents, and advocates with whom we work, have made for many years, and are a momentous step towards creating a more supportive and restorative school environment for all members of the school community. Some of the noteworthy changes in the discipline code that we support include:

- Reducing the maximum length of superintendent’s suspensions from 180 to 20 school days for most infractions;
- Shortening the length of time available for each disciplinary response involving suspension to 5 school days for most infractions, thereby reducing the discretion that has contributed to the significant racial disparities in length of suspension for the same infraction;



- Expanding the range of disciplinary responses to include less severe options for some infractions, including those related to bullying;
- Expanding the use of, and access to, restorative practices to all schools, including the addition of “re-entry” circles to facilitate a student’s return to school;
- Restructuring the code to place the Student Bill of Rights and detailed information on Supports and Interventions at the front of the document;
- Adding citations and links to the Chancellor’s Regulations where applicable, including the added reference to Chancellor’s Regulation A-411 on behavioral crisis de-escalation and intervention;
- Adding reference markers to the Supports and Interventions section of the code’s infraction charts to specific information found in the code on each support and intervention;
- Including the definition of bullying found in the Dignity for All Students’ Act;
- Recommending the use of an Individualized Support Plan (“ISP”) as an appropriate response for a student engaged in or being bullied; and
- Adding the right to bathroom use and pronoun use in accordance with a student’s gender identity in the Student Bill of Rights.

We look forward to seeing the positive impact that these changes have on individual students and whole-school climate.

Recommendations:

In addition to our support for these proposed changes to the code, we strongly encourage the DOE to adopt the following recommendations discussed below in the finalized code: 1) reduce the maximum length of suspension for most Level 5 infractions; 2) add procedures to prevent repeat suspensions and classroom removals; 3) encourage approaches to prevent and address bullying, intimidation or harassment; 4) mandate supports and interventions and promote restorative practices; 5) mandate consideration of mitigating factors; 6) change the K-5 Discipline Code to reflect its application to young children; 7) eliminate the immediate removal of students prior to a suspension hearing; 8) ensure that students at Alternate Learning Centers promptly receive work from their home schools; and 9) provide sufficient notice for community engagement and a public hearing on proposed code changes.

1. Reduce the Maximum Length of Suspension for Most Level 5 Infractions

We commend the DOE for limiting suspension length to 20 school days for most infractions and including the option for schools to use less severe disciplinary responses for Level 4 infractions. However, we urge the DOE to extend this 20-school-day limit and the



inclusion of lesser disciplinary options to all Level 5 infractions where not prohibited by federal law (B50-61).

Twenty school days is effectively an entire month of school, which is already a significant amount of time for a student to be removed from their school environment, instruction, and peers. Exclusionary discipline practices place students at risk for experiencing a myriad of short- and long-term educational, economic, and social-emotional problems, including school avoidance, increased likelihood of dropping out of school, and involvement with the juvenile and/or criminal justice system.¹ The American Academy of Pediatrics and the American Psychological Association note the significant negative health and mental health impacts of out-of-school suspensions on students, including negative impacts on self-esteem and increased student alienation from school staff.² Furthermore, students of color and students with disabilities are often disciplined more harshly and more frequently than their peers, causing serious, negative consequences for their academic success.³ An analysis of DOE suspension records by the Independent Budget Office in New York City found that black students, including black students with disabilities, were more likely to receive longer suspensions on average for 8 of the 10 most common behavioral infractions.⁴

Currently, all Level 5 infractions⁵ in the proposed code include Disciplinary Response “L,” which allows for the imposition of a suspension for 21 to 39 school days or 40 to 180 school days “when there are circumstances[] or when law dictates suspensions for 21 school days or more.” The code defines these “circumstances” as “seriously dangerous and/or violent

¹ See, e.g., Advancement Project, Padres and Jovenes Unidos, Southwest Youth Collaborative, and Children & Family Justice Center of Northwestern University School of Law, Education on Lockdown: The Schoolhouse to Jailhouse Track, 2005, https://b.3cdn.net/advancement/5351180e24cb166d02_mlbrqgxlh.pdf; Johanna Wald and Daniel Losen, “Defining and Redirecting a School-to-Prison Pipeline,” New Directions for Youth Development, vol. 99 (2003), https://pdfs.semanticscholar.org/6954/11a14bda3a82dd941c504272c57a8ccc4d44.pdf?_ga=2.95874396.118423638.1541436106-983094117.1541436106.

² See American Academy of Pediatrics, Policy Statement by Committee on School Health, Out of School Suspension and Expulsion, 2013, <https://pediatrics.aappublications.org/content/pediatrics/112/5/1206.full.pdf>; American Psychological Association Zero Tolerance Task Force, Are Zero Tolerance Policies Effective in the Schools An Evidentiary Review and Recommendations 2006, <https://www.apa.org/pubs/info/reports/zero-tolerance-report.pdf>.

³ See U.S. Commission on Civil Rights, Beyond Suspensions: Examining School Discipline Policies and Connections to the School-to-Prison Pipeline for Students of Color with Disabilities, Briefing Report, July 2019, <https://www.usccr.gov/pubs/2019/07-23-Beyond-Suspensions.pdf>.

⁴ Liza Pappas, “When Students of Different Ethnicities Are Suspended For the Same Infraction Is the Average Length of Their Suspensions the Same?” New York Independent Budget Office, Oct. 2018, <https://ibo.nyc.ny.us/iboreports/print-nycbtn-suspensions-october-2018.pdf>.

⁵ DOE Red Line Edits to Citywide Behavioral Expectations to Support Student Learning 2019-2020, K-5, pg. 36-37, <https://cdn-blob-prd.azureedge.net/prd-pws/docs/default-source/default-document-library/red-line-revisions-06-28-19-discipline-code-6-12-final-remediated-updated-sept-2018-rev-jan-2019.pdf>; DOE Red Line Edits to Citywide Behavioral Expectations to Support Student Learning 2019-2020, 6-12, pg. 36-37, <https://cdn-blob-prd.azureedge.net/prd-pws/docs/default-source/default-document-library/red-line-revisions-06-28-19-discipline-code-k-5-final-remediated-updated-sept-2018.pdf>.



behavior”.⁶ This subjective standard opens the door to perpetuating significant disparities by race and disability in the imposition of Disciplinary Response “L.” Moreover, the Gun-Free Schools Act⁷ requires a one-year suspension only for students who have brought to, or possessed a firearm at, school. Only one Level 5 infraction falls into this category. Significantly, a student who allegedly engages in truly violent behavior where a member of the school community is seriously injured typically faces criminal charges and an order of protection issued by a judge requiring the student to stay away from the impacted member of the school community and the particular school. Therefore, a long-term suspension for over 20 school days for Level 5 infractions serves no purpose other than to perpetuate disparities and significant negative outcomes for youth.

We also recommend that the DOE modify the code to align it with the city’s recently announced school discipline reform measures recognizing the harm of zero tolerance policies that mandate suspension. For all Level 4 and 5 infractions (except A60 and B62 governed by the Gun-Free Schools Act), we urge the DOE to add Disciplinary Responses “D” to “G” as options, which include shorter lengths of suspensions and alternatives to suspension. Currently, some Level 4 infractions and most Level 5 infractions mandate suspension: for these infractions the least punitive option allowed is either Disciplinary Response “G,” a principal’s suspension for 1 to 5 days, or Disciplinary Response “H,” a superintendent’s suspension for 6 to 10 days. Moreover, the disciplinary responses for Level 5 infractions for students in 4th and 5th grade are harsher than for students in 6th to 12th grade – mandating a superintendent’s suspension and principal’s suspension, respectively. We recommend changing the K-5 code so that students in 4th and 5th grade have the same disciplinary responses as students in 3rd grade for Level 5 infractions.

2. Add Procedures to Prevent Repeat Suspensions and Classroom Removals

With the decrease in the maximum length of suspension to 20 days for the vast majority of infractions, we are concerned that schools without the necessary resources and training to support students will resort to suspending or removing some students multiple times within a school year, thereby excluding them from school. In particular, the changes to the length of superintendent’s suspensions may lead to an increase in repeated exclusionary discipline, particularly classroom removals and principal’s suspensions where there is less oversight and due process for students.

A recent study has shown that there is a cumulatively negative impact of suspensions on future behavior.⁸ Suspensions and removals are not only an ineffective way to change student

⁶ *Id.* at 23.

⁷ 20 U.S.C. § 7961.

⁸ See Thomas J. Mowen, John J. Brent & John H. Boman IV, The Effect of School Discipline on Offending across Time, *Justice Quarterly* (2019), <https://www.tandfonline.com/doi/full/10.1080/07418825.2019.1625428>.



behavior, but they can also make a student's behavior worse over time.⁹ Given these findings, it is crucial that the discipline code prevent repeat removals and suspensions for students.

In order to address this increased risk for repeat removals and suspensions and combat the negative consequences of multiple removals and suspensions, we recommend that the DOE include a process in the code to prevent this end-run around limitations on school exclusion. For example, if a student is suspended or removed from class more than two times in a school year, the DOE should mandate a review and analysis of the student's behavior to prevent a third suspension or removal. This analysis should determine the specific behavior underlying the suspensions or removals and a plan to address this behavior in a positive, non-punitive manner. Such a behavioral analysis and proactive plan will help prevent further problem behavior, which the removals and suspensions failed to address. The Director of Student Support Services at the school's Borough/Citywide Office should be involved in identifying and providing behavioral specialists, school climate specialists, direct mental health support, or other resources the school can utilize to develop and implement a plan for the student.

We also strongly recommend that the DOE revise the section of the code entitled Removals and Suspensions to describe this process to prevent repeat removals and suspensions for all students, as well as special protections for students with disabilities. This section of the code should state that, under the Individuals with Disability Education Act ("IDEA"), school staff cannot impose repeat removals and suspensions without regard to whether a child's IEP is properly addressing their behavioral needs. The code should make clear that schools do not have 10 "free days" to remove or suspend students with disabilities from school. Rather, the code should explain that schools must provide appropriate behavioral supports to children with disabilities who require such supports in order to receive a free appropriate public education ("FAPE") and placement in the least restrictive environment ("LRE").¹⁰

To comply with the IDEA, the DOE should ensure that the citywide system for tracking removals and suspensions contains accurate information and triggers school staff to conduct Manifestation Determination Reviews ("MDRs") whenever required, including when 10 school days are reached cumulatively, and not just consecutively, in a school year. Furthermore, as part of a citywide process for preventing repeat removals and suspensions, we recommend that the

⁹ *Id.*

¹⁰ In light of research about the detrimental impacts of disciplinary removals, including short-term disciplinary removals, the U.S. Department of Education's Office of Special Education and Rehabilitative Services ("OSERS") issued guidance in 2016 to clarify that schools must provide appropriate behavioral supports to children with disabilities who require such supports to receive a FAPE and placement in the LRE. OSERS explained that, under the IDEA, school personnel do not have the broad authority to implement short-term removals without restriction and without regard to whether the child's IEP is properly addressing his or her behavioral needs. OSERS further clarified that schools do not have 10 "free days" to remove or suspend students with disabilities from school. See U.S. Dept of Education, Office of Special Education and Rehabilitative Services, Dear Colleague Letter on the Inclusion of Behavioral Supports on Individualized Education Programs (Aug. 1, 2016), <https://sites.ed.gov/idea/files/dcl-on-pbis-in-ieps-08-01-2016.pdf>.



DOE revise the code to clearly reference a system that monitors repeat removals and suspensions for students with disabilities before 10 days are reached cumulatively. The Administrator for Special Education and Director of Student Support Services at the school's Borough/Citywide Office should be involved in monitoring the process, helping schools ensure that students' IEPs properly address students' behavioral needs, and providing schools with behavioral specialists for training, support, and help with implementation. The code should also provide a link to contact information for the Borough/Citywide Office so that school staff can affirmatively reach out for help when needed.

In addition to creating a system to address repeat suspensions and removals on an individual student level, we also recommend that the DOE implement a system to provide school-wide supports to schools that suspend or remove students at high rates. We recommend that the DOE conduct periodic monitoring and assessment of classroom removals, principal's suspensions, and superintendent's suspension requests and provide school-wide supports and interventions. The DOE's assessment should identify and support schools that: (i) issue classroom removals and principal's suspensions or request superintendent's suspensions at a rate that is disproportionate to the school size; or (ii) request more than the average number of suspensions for particular infractions, including the most common infractions with the most significant racial disparities (e.g., B40 for bullying, B45 for reckless behavior, B24 for altercation), and the most subjective infractions (e.g., B21 for defying authority and B26 for engaging in gang-related behavior).

3. Encourage Approaches to Prevent and Address Bullying, Intimidation, and Harassment

We have specific recommendations to strengthen the section in the proposed discipline code on bullying, intimidation, or harassment. First, in the section on "Addressing Bullying and Bias-Based Behavior,"¹¹ we recommend that the DOE emphasize the need for a preventive and proactive approach that addresses the root causes of bullying and harassing behavior to prevent problems before they start. Specifically, we recommend revising the code to allow for and encourage the use of restorative practices to address bullying, intimidation, and harassment, when the parties involved consent. The code should make clear that restorative practices can prevent and address bullying by fostering understanding and relationships between community members with different identities, backgrounds, and points of view.

State guidance on DASA and research indicate the effective use of restorative practices in schools to address bullying.¹² Additionally, Berkeley Unified School District adopted a policy

¹¹ Citywide Behavioral Expectations to Support Student Learning 2019-2020, pgs. 15-16.

¹² See New York State Education Department and New York State Center for School Safety, Dignity for All Students Act, Requirements for Schools (Tool for training school employees), 21, https://ag.ny.gov/sites/default/files/dasa_training_materials_final_-_8.30.16.pdf. See also, e.g., Center for Safe Schools, Clemson Institute on Family and Neighborhood Life, & Highmark Foundation, *Integrating Bullying Prevention and Restorative Practices in Schools: Considerations for Practitioners and Policymakers* (Oct. 2014),



that “encourages the use of restorative justice and alternative resolutions in lieu of expulsion hearings, even in the most serious cases, including cases of sexual assault and sexual battery.”¹³ The school board recognized that: “Restorative justice is, in many cases, more likely to repair harm to complainant(s) and likely to be less traumatic to complainant(s) than an adversarial expulsion hearing.”¹⁴ A national leader in restorative justice has explained that restorative justice provides an option for complainants “to receive healing and vindication in the face [of] the harms” suffered.”¹⁵

In addition, in the sections of the proposed code on reporting bullying behavior¹⁶, the DOE should offer specific examples of appropriate follow-up action that the DOE may take after a parent reports a concern about bullying behavior. This should include restorative practices, referral for counseling, participation in community service, development of an Individualized Support Plan (“ISP”), and reconvening an IEP meeting, to name just a few examples. This section should also include a way for families and support personnel to request trainings or support from specific DOE staff and offices, such as behavioral specialists or school climate managers at Borough/Citywide Offices, to prevent and address bullying incidents.

Finally, we support the inclusion of ISPs as a response to bullying behavior in the proposed code. However, the DOE should add resources and give more direction and support to schools and parents on how to develop effective ISPs. We believe that ISPs can be an effective intervention when addressing bullying behavior. However, given that this is a new addition to the code, we are concerned that schools will not be able to develop effective ISPs without additional resources and support. We also recommend adding the option for developing an ISP to the list of “Supports and Interventions” on all pages in the discipline code listing infractions that refer to bullying, intimidation, or harassment-related behavior.

4. Mandate Supports and Interventions and Promote Restorative Practices

While city-wide investments in restorative practices and social-emotional learning were announced with the proposed code, the proposed code falls short by not requiring the use of

<http://www.safeschools.info/content/BPRPWhitePaper2014.pdf> (suggesting ways restorative practices and bullying prevention can be used in tandem); Morrison, B., *Bullying and victimization in schools: A restorative justice approach*, Trends and Issues in Crime and Criminal Justice, 219 (2002),

<https://aic.gov.au/publications/tandi/tandi219> (concluding that restorative justice approaches can be effective in addressing bullying in schools by incorporating a range of processes for maintaining healthy relationships, including community building, conflict resolution, and shame management).

¹³ Berkeley Unified School District Board of Education, Board Policy (“BP”) 5144.3, Administrative Regulation (“AR”) 5144.3, Expulsion, (last visited July 25, 2019), <https://www.berkeleyschools.net/schoolboard/policies/>.

¹⁴ *Id.*

¹⁵ See Letter from Sujatha Baliga (sbaliga@impactjustice.org), Director, Restorative Justice Project, Vice President, Impact Research, to Berkeley Unified School District, undated (letter on file with Advocates for Children). There are striking results: “In a study of participating crime victims in Alameda County, including sexual harm victims, over 98% of victims said that they would participate in a RJ process again.” *Id.* .

¹⁶ Citywide Behavioral Expectations to Support Student Learning 2019-2020, pg. 16.



supports and interventions before the use of a disciplinary response for all but violent student behavior. We recommend that the DOE mandate supports and interventions prior to considering or issuing a disciplinary response, except where an immediate disciplinary response is necessary to address violent behavior or seriously dangerous behavior where there are no mitigating circumstances (*see* “5. Mandate Consideration of Mitigating Factors”). The section on Progressive Ladder of Support Responses in the revised code allows schools to use supports and interventions in lieu of suspensions “[i]n certain cases,” without providing guidance on when it would be appropriate to do so. In order to make meaningful, sustained progress towards eliminating disparities based on race and disability and reducing schools’ overreliance on suspension to address behavior, the DOE needs to revise the code to require schools to use the social-emotional supports, restorative practices, and other positive behavioral interventions that address challenging behavior and resolve its underlying causes.

Towards that end, to ensure that restorative practices are a viable alternative to a disciplinary response as intended, we recommend including restorative practices on both the lists of “Supports and Interventions” and the “Range of Disciplinary Responses”¹⁷ in the infraction charts. The code should provide a link to the Borough/Citywide Offices so that school staff can reach out for help accessing and implementing supports and interventions. In addition, the DOE should also create a process to monitor and incentivize the tracking, use, and outcomes of supports and interventions to ensure their use and promote successes. The Borough/Citywide Offices should be involved in implementing this process. The DOE should also modify the Online Occurrence Reporting System (“OORS”) to prompt administrators to use supports and interventions prior to selecting a disciplinary response and provide links to detailed information on each support and intervention, as well as how to access support to implement each support and intervention.

5. Mandate Consideration of Mitigating Factors

The proposed code contains a section on Determining the Disciplinary Response¹⁸, which mandates that schools consider specific factors prior to determining the appropriate disciplinary measure. We recommend that this section be highlighted and placed immediately prior to the infraction charts in the code to make clear that mitigating factors must be considered before issuing a disciplinary response. We also recommend that the DOE list infractions where using this rubric is particularly essential and add specific language mandating the consideration of mitigating factors to those infractions within the code. This language already exists for possession of a Category II weapon (A46/B48), which provides that before requesting or imposing a suspension the principal must consider whether there are mitigating factors present. This provision should also be added to other infractions where mitigating factors are important to consider: infractions involving the possession of items that are not intended for use as weapons but fall under Category I weapons, such as boxcutters and other knives with a purpose;

¹⁷ Citywide Behavioral Expectations to Support Student Learning 2019-2020, pg. 18.

¹⁸ Citywide Behavioral Expectations to Support Student Learning 2019-2020, pg. 8.



altercations or fighting where a student is not the aggressor or there are circumstances that led to the unavoidable escalation of a student's behavior; reckless behavior where harm was not foreseeable or intended; and incidents involving group violence where a student was defending themselves from harm.

In addition, where mitigating factors are present for Level 4 and 5 infractions that currently do not allow for non-punitive disciplinary responses as an option (Disciplinary Responses D-F), we recommend that the DOE allow schools to pursue these responses in lieu of a suspension and revise the code accordingly. There are a number of circumstances where a student may engage in behavior that rises to a Level 4 or 5 infraction, but the proposed code fails to take into account mitigating factors. For example, if a student brings a boxcutter to school because they need it for their job after school (an example used in one of the engagement sessions) or if a parent gives their child a kitchen knife to bring to school to cut hard lunch food, the student is in violation of Infraction B58 and the lowest disciplinary response currently allowed is Disciplinary Response G, a principal's suspension. We hear from principals that in instances like these the DOE's zero tolerance policy only does harm. We encourage the DOE to allow schools to use the full range of disciplinary responses, (D-K), including for these Level 5 infractions. The range of options should be expanded to Disciplinary Responses D, E, and F so schools are not forced to suspend students where there are mitigating circumstances.

6. Change the K-5 Discipline Code to Reflect its Application to Young Children

We have two recommendations specifically for the K-5 proposed code. First, we recommend eliminating all gang-related infractions for grades Kindergarten to 5. Such young children suspected of engaging in gang activity desperately need supports and interventions, not punitive disciplinary responses. Second, for Level 5 infractions of the K-5 proposed code,¹⁹ we recommend that the DOE change the disciplinary responses available to D-K for grades 4-5, to both include lesser disciplinary responses as options for schools as well as maintain the 20-day limit on superintendent's suspensions for all infractions where a longer suspension is not required by federal law. Especially for our younger students, punitive, exclusionary discipline has significant long-term impacts on academic, social-emotional, and behavior outcomes. We should limit the circumstances where schools must suspend students and allow for the use of more positive and restorative responses to behavior that keep students in class supported and learning.

7. Eliminate the Immediate Removal of Students from School Prior to A Suspension Hearing

Currently, students are immediately and automatically removed from school once a superintendent's suspension is issued and assigned to an Alternate Learning Center ("ALC") while waiting for a hearing. Since hearings are scheduled five school days after the effective date

¹⁹ Citywide Behavioral Expectations to Support Student Learning 2019-2020, Grades K-5, pgs. 35-36.



of suspension, a student is removed from their school at least five school days before the opportunity to be heard at a hearing and a determination whether a suspension is even warranted. This automatic removal – without regard for the specific situation or incident – has a detrimental impact on a student's social-emotional well-being and academic performance. In our work, we repeatedly see the negative impact that these immediate removals have on a student's relationship with their school and their sense of belonging in a school community. This occurs even for infractions where there is no violent or harmful behavior. In order to address this issue, we recommend that the DOE stop the immediate removal of students prior to a suspension hearing when there is no immediate or ongoing threat of danger to the school community. Immediate removal should never occur for Level 1-3 infractions and for Level 4 and 5 infractions the decision should be made on a case-by-case basis and reserved for truly dangerous and violent incidents.

8. Ensure that Students at Alternate Learning Centers Promptly Receive Work from their Home Schools

We are also concerned about the impact of some of the proposed code changes on students required to attend ALCs. Currently, our clients frequently experience issues with coordination of schoolwork when placed at an ALC. Often the ALC does not receive work from the student's home school so the ALC provides the student with different work for which the student cannot receive credit. At times, even when a student does receive work from their home school to complete at the ALC, the student is still given different work at the ALC because it is difficult for the ALC to provide support for students who are all doing different types of work. This lack of communication and coordination between a student's home school and their ALC and failure to provide some students at ALCs with appropriate work can be extremely frustrating for students when their work does not matter and they are, in effect, academically penalized during the suspension. This leads to a more challenging transition when they return – both academically and social-emotionally – as students are often behind in their work and need to make up work after school.

Under the proposed code, where students will spend less time in ALCs, it will be even more important for home schools and ALCs to effectively communicate, collaborate, coordinate, and support students so they can complete work and receive appropriate credit. We urge the DOE to put a system in place to address this issue and make it clear within the discipline code section on Alternate Instruction that the home school is responsible for promptly providing work to the ALCs and the ALC is responsible for providing the student with the appropriate instruction and work. In addition, we recommend that the DOE designate a point person in each school and each ALC to lead this coordination effort and ensure students are awarded appropriate credit and not penalized academically while serving a suspension.

9. Provide Sufficient Notice for Community Engagement and a Public Hearing



Advocates for Children
of New York

Protecting every child's right to learn



While we appreciate the need to move quickly on many of the proposed changes, we are concerned about the format and scheduling of the DOE's public engagement sessions on the proposal. The DOE scheduled the public engagement sessions during the summer, when many families are out of town. Additionally, the DOE scheduled the first public engagement session on June 29, 2019, only nine days after the announcement of the changes and only one day after the DOE released the proposed discipline code. The remaining sessions were scheduled shortly thereafter, with only one session in each borough, and then another two added at the last minute. This rushed release and time period did not allow for meaningful public input and engagement. In fact, we have observed that there has been extremely limited student and community member participation in the engagement sessions. Many of the participants were parents of students in the school or district where the session was hosted and may not be reflective of the rest of the borough. In addition, the highly structured format of the engagement sessions, where attendees were split into groups to discuss discrete questions, did not allow for everyone in attendance to hear all the discussions.

Furthermore, the sessions failed to comport with state law mandating a public hearing. New York State Education Law § 2801(2) provides that a school district's discipline code "may be adopted by the school board or trustees only after at least one public hearing that provides for the participation of school personnel, parents, students and any other interested parties..." While we are in support of many of the changes in the code, in the future, the DOE must be sure to hold a public hearing on any proposed code changes with ample time for community engagement to ensure necessary input, buy-in, and support for the changes.