



**Testimony Before The New York City Council Committee on Education  
and Committee on Mental Health, Mental Retardation, Alcoholism, Drug Abuse,  
and Disability Services**

**May 1, 2012**

**LEGAL SERVICES NYC**

Nelson Mar, Senior Staff Attorney  
Legal Services NYC – Bronx  
579 Courtlandt Avenue  
Bronx, NY 10451  
718-928-3756  
[nmar@bx.ls-nyc.org](mailto:nmar@bx.ls-nyc.org)

Tara Foster, Senior Staff Attorney  
Queens Legal Services  
42-15 Crescent Street, 9<sup>th</sup> Floor  
Long Island City, NY 11101  
347-592-2234  
[tfoster@qls.ls-nyc.org](mailto:tfoster@qls.ls-nyc.org)

**Legal Services NYC**  
40 Worth Street, Suite 606, New York, NY 10013  
Phone: 646-442-3600 Fax: 646-442-3601 [www.LegalServicesNYC.org](http://www.LegalServicesNYC.org)  
Raun J. Rasmussen, Executive Director  
Joseph Steven Genova, Board Chair

**Testimony Before The New York City Council Committee on Education  
and Committee on Mental Health, Mental Retardation, Alcoholism, Drug Abuse,  
and Disability Services**

**May 1, 2012**

**LEGAL SERVICES NYC**

Nelson Mar, Senior Staff Attorney  
Legal Services NYC – Bronx  
579 Courtlandt Avenue  
Bronx, NY 10451  
718-928-3756  
[nmar@bx.ls-nyc.org](mailto:nmar@bx.ls-nyc.org)

Tara Foster, Senior Staff Attorney  
Queens Legal Services  
42-15 Crescent Street, 9<sup>th</sup> Floor  
Long Island City, NY 11101  
347-592-2234  
[tfoster@qls.ls-nyc.org](mailto:tfoster@qls.ls-nyc.org)

**Introduction**

Legal Services NYC is the largest non-profit provider of free civil legal services in New York City. We are dedicated to expanding the rights of low-income New Yorkers in areas such as housing, family, consumer, domestic violence, foreclosure, immigration, disability and education. With offices in all five boroughs, our work is designed to improve the lives of our diverse client populations through a holistic combination of individual legal advocacy and social work support, group action, policy work and community outreach.

Through our local offices, Legal Services NYC assists hundreds of families every year with disability and education matters. Over 80% of our student clients are children of color and/or immigrants, ranging in age from 3 to 21. Our Education and Disability

advocates assist New York City public school students and their families in a range of areas including disability accommodations, special education, student discipline, transportation, school transfers and academic intervention issues. We also mentor and partner with students in various law-schools and law-school programs including the Suspension Representation Project. We train and assist community-based organizations, pro bono attorneys and elected officials. We participate in a number of coalitions including the Dignity in Schools Campaign.

We thank the Council for organizing this important oversight hearing and for inviting us to participate and testify about two significant and related issues disproportionately affecting low-income children of color and immigrants in the NYC public schools: the inappropriate and illegal use of emergency medical services and imposition of so-called psychiatric suspensions in situations that have no medical urgency. We urge the Council to support the proposals discussed herein including increased resources for school-based mental health services, training for school staff in crisis intervention and de-escalation techniques, amendment of the Student Safety Act to require public information and reporting by the Fire Department and DOE on EMS and psychiatric exclusions, and creation of more consistent and constructive policies and practices for dealing with disruptive behavior in schools.

### **Scope of the Problem**

In our work with school-aged children and their families, we see day-to-day examples of the need for improved mental health services and positive behavioral supports and interventions in New York City Schools. We believe that much can be

done to change and improve policies and practices concerning childhood behavior and mental health issues in school. We are here today to discuss two disturbing practices, both of which stigmatize children and do little to address underlying mental health issues, if any even exist: (1) the “EMS”ing of public school students—the forced removal of children from school via ambulance or emergency services for non-suicidal behavior; and (2) the increasing use of inappropriate “psychiatric suspensions”—forcing parents to keep children from school until they obtain psychiatric clearance.

Over-utilization of emergency medical services is not a new problem. For years, our advocates have dealt with inappropriate use of hospital emergency services for issues ranging from undiagnosed learning disabilities to kindergarten tantrums.<sup>1</sup> Parents contacting our offices typically describe situations where their minor children are removed by emergency medical services for childhood behavior or misbehavior which does not rise to the level of a medical emergency. After enduring the ordeal of forced removal by emergency services and consultation or evaluation at a hospital, the vast majority of children are released the same day and deemed fit to return to school.<sup>2</sup> Many hospital staff have expressed frustration to Legal Services NYC staff about why schools resort to such extreme measures.

We have also seen a disturbing trend in which NYC schools use stigmatizing medical interventions with children whose needs are best served through less extreme alternatives such as school-based services. For example, more New York City school

---

<sup>1</sup> In 2004, the New York Times ran an article noting school officials’ inappropriate use of hospital emergency rooms to deal with “everything from student behavior problems to undiagnosed learning disabilities.” Hospitals say City schools Use them as a Cure-All, New York Times, May 18, 2004.

<sup>2</sup> This problem was highlighted in a recent article in the New York Times entitled Keeping Students’ Mental Health Care Out of the E.R., April 6, 2012.

administrators are instructing parents not to bring their children to school until they have obtained a psychological or psychiatric clearance letter. Based on client stories reported to us, demands for clearance letters generally follow from some claimed non-suicidal behavioral issue, purported instance of misbehavior or a perception that the child has a disability or mental health issue or needs to be on medication.

The practice of removing and banning students from school until such time as the parent can obtain the requisite clearance letter insisted upon by the school, amounts to an illegal psychiatric suspension. Students may lose days or weeks of school while their parents attempt to find an appropriate doctor or professional qualified to assess their child and provide documentation satisfactory to the school. When a school has concerns for the child's mental health or medical or emotional well-being, far more effective means can be used to assist parents in helping their children, including referrals for special education, at risk counseling and information about available community resources.

The inappropriate use of emergency medical services and compulsory medical clearance letters for purported disruptive behavior or perceived disabilities also violates a wide range of New York State education laws and regulations ranging from the compulsory attendance laws<sup>3</sup> to due process laws concerning the legal removal of students<sup>4</sup> as well as local Chancellor's regulations.<sup>5</sup> In addition, these practices frequently violate federal laws such as the Individuals with Disabilities Education Improvement Act (IDEIA)<sup>6</sup> which governs special education practices and Section 504 of

---

<sup>3</sup> NY State Education Law § 3205.

<sup>4</sup> NY Education Law § 3214; 8 NYCRR §100.2.

<sup>5</sup> Chancellor's Regulation A-443.

<sup>6</sup> 20 U.S.C § 1400, *et seq.*

the Rehabilitation Act of 1973<sup>7</sup>, which protects individuals with a broader range of disabilities.

The cost of misusing emergency medical services is high for the City, schools, children and families involved. Monetary costs may include hospital fees and ambulance transport fees<sup>8</sup>, expenses associated with school personnel dispatched to accompany children to the hospital, ACS expenses, lost wages, transportation costs and other expenses. In addition to the monetary costs, inappropriate EMSing and exclusion exacts a heavy toll in terms of the trauma inflicted on the children and families involved. This often causes or deepens a chasm of distrust between potentially at risk students and the school community, damages trust between emergency medical services responders and potentially at risk students, and adversely affects the education of the children involved due to disruption and lost instructional time.

Like the problems associated with misuse of restraint and oversubscription to zero tolerance practices like suspension, the frequent and unnecessary resort to EMS and psychiatric or psychological clearance letters illustrates that many schools are ill equipped to respond to disruptive students, lack resources to properly assess students who are presenting with disruptive behavior, lack training in de-escalation techniques and practices and lack familiarity with or connections to resources in the community to meet the mental health needs of students.

Based upon what we see and hear from families and health professionals, the practice of overusing emergency medical services and forcing parents to obtain clearance

---

<sup>7</sup> 29 U.S.C § 794.

<sup>8</sup> The following cost breakdown reflects the costs incurred by one of our clients when their daughter was sent to the ER by her middle school: Hospital ER charges: \$775.00 and EMS Ambulance Services: \$525.00 for a total of \$1300.00.

letters as a condition of attending school occurs throughout the city, but seems more prevalent in low-income communities where many students and their families already experience significant trauma on a daily basis.

In order to shed further light on the problem and review it, we have made attempts to obtain more formal data, most of which should already be collected or otherwise documented but which is not publicly reported. For example, the Department of Education's Online Occurrence Reporting System (OORS) allows for input of information regarding whether emergency medical services were contacted in a given situation. While it is unclear if schools are regularly and properly documenting such information, at least some data is collected and recorded. FOIL requests by Legal Services NYC – Bronx and Queens Legal Services to the Department of Education, the Fire Department, and the Office of Mental Health have gone largely unanswered. Gathering this information is necessary in order to have meaningful discussion about the problem and how to better address it.

### **Solutions**

The practice by school officials of utilizing EMS services or medical clearance letters to address disruptive student behavior is a costly and ineffective. The Department of Education and charter schools must utilize research based methods to address disruptive behaviors before they reach a point of crisis.

An important first step to minimizing the use of emergency medical services and medical clearance letters is to determine the extent of the practice. The Department of Education (DOE), the Fire Department of New York (FDNY) and the Department of Health and Mental Health (DOHMH) must make public the data regarding these

practices. Specifically, the DOE must collect and make public the total number of students sent by each public school to a hospital emergency room and the reason for the request for emergency medical services. Likewise the FDNY must publicize the total number of calls for emergency medical services to a school location. Lastly the DOHMH must collect information from all NYC hospital emergency rooms and mental health providers where a student was referred for a medical clearance letter. Only with data can policy makers be able to quantify the depth of the practice and craft appropriate public policy to address it.

Secondly, the DOE and charter schools must utilize research based approaches to addressing disruptive student behaviors. The use of EMS and medical clearance letters is nothing more than another stop on the “Schools to Prison Pipeline” and what one emergency room doctor coined a “psychiatric suspension”. This practice is rooted in the discredited notion that disruptive behaviors can be modified through the removal and/or suspension of the disruptive student.<sup>9</sup> Mental health professionals discourage these punitive approaches, which do little to address the underlying needs of the student.

Evidence based approaches have been shown to be effective in reducing disruptive student behaviors and these approaches include: positive behavior interventions and supports (PBIS); Safe Responsive Schools (SRS) and Restorative Practices.<sup>10</sup> Although many of these approaches are already utilized in some form in many public schools in New York City, the DOE has not adopted a policy requiring all NYC public schools to utilize these methods. Instead, the DOE fails to even encourage

---

<sup>9</sup> American Psychological Association Zero Tolerance Task Force, “Are Zero Tolerance Policies Effective in the Schools?”, *American Psychologist*, Vol. 63, No. 9, 852–862, (December 2008).

<sup>10</sup> Skiba, R., and Rausch, M. K., “School Disciplinary Systems: Alternatives to Suspension and Expulsion”, *Children’s Needs III: Development, Prevention, and Intervention*, (Bear & Minke, editors), National Association of School Psychologists, (2006).



the use of these in their policies. While the New York City Discipline Code and Chancellor's Regulation A-443 provides for "guidance interventions," their overall thrust reflects an emphasis on removals and suspensions as a disciplinary response to disruptive students. The DOE should implement a policy requiring all NYC public schools to adopt approaches like PBIS, SRS and Restorative Practices to address and minimize disruptive behaviors.

The nonprofit organization Turnaround for Children utilizes such a whole school approach to address disruptive student behaviors. Working in a school over a three-year period, Turnaround provides extensive professional development for teachers and leaders in instructional and behavioral strategies, sets up behavioral and academic intervention systems for the highest-need students, and supports principals in working on key school leadership issues. Additionally, Turnaround helps schools establish effective partnerships with community-based mental health providers and other child-serving agencies. Anecdotally, schools that have worked with Turnaround appear to make fewer calls to EMS.<sup>11</sup>

In addition to the above whole school approaches, the following specific recommendations would greatly assist in reducing the rate of 911 calls.

- DOE and NYS Education Department should issue new policy and guidelines prohibiting the use of EMS services and medical clearance letters to exclude students from school for solely disruptive behaviors.
- The DOE should increase resources to public schools that serve low income communities<sup>12</sup> so these schools are able to

---

<sup>11</sup> See enclosed New York Daily News Op-Ed by Dr. Pamela Cantor, Executive Director of Turnaround for Children, Dec. 19, 2011.

<sup>12</sup> It is our belief that once the data is collected it will likely show schools in low income neighborhoods have higher rates of EMS usage. Such a correlation already exists with regards to suspension rates. The

- Establish onsite school based mental health services;
- Develop crisis response teams in schools that are staffed with properly trained professionals;
- Provide training and professional development in these areas to all staff:
  - de-escalation techniques;
  - pre-crisis identification and assessment of at risk students who present, or are likely to present with disruptive behaviors;
  - evidence based interventions for disruptive students with IEP's.

### **Legislative Proposals**

The following are proposals for legislation that may help stop the misuse of emergency medical services by the public schools.

The New York City Council should consider amending the Student Safety Act to require New York City DOE and FDNY to make annual reports on the usage of EMS services by all New York City public schools and charter schools.

The New York City Council should consider amending the Administrative Code to require school nurses or a qualified school health professional to be trained in crisis intervention, and de-escalation techniques. In addition, school nurses or school health professionals should also be consulted prior to a referral to EMS.

On the state level, New York City Council members can support the following proposed legislation: A8343-2011, (sponsored by Assemblymember Catherine Nolan, co-sponsored by Assemblymember Inez Baron; referred to education 6/14/2011) would

---

Bronx is the borough with the highest rate of poverty among the five boroughs and has the highest suspension rates. In 2009-2010, there were 72,345 suspensions in New York City public schools. That includes 55,956 Principal's suspensions (1-5 days) and 16,389 Superintendent's suspensions (6 days - 1 year). Students in the Bronx are suspended more often than students in any other borough. (There are 8.63 suspensions per 100 students in the Bronx as compared with 7.30 suspensions per 100 students citywide.) See, <http://schools.nyc.gov/Accountability/data/default.htm>; *Education Interrupted: The Growing Use of Suspensions In New York City's Public Schools* (2011).

prohibit the use of handcuffs on children younger than ten years old; and A7994-2011 (S3214-a), (sponsored in the Assembly by Assemblymember Barron, co-sponsored by Assemblymembers Schimel, Abinanti, Stevenson, Meng, and Nolan; referred to education 5/25/2011) would prohibit the use of handcuffs on students with disabilities.