



Advocates for Children of New York

Protecting every child's right to learn

**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 2013-2014

**By Bernard Dufresne, Staff Attorney,
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June 6, 2013**

Thank you for the opportunity to comment on the draft citywide discipline code for 2013-2014. 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 and the elimination of suspensions for Level 3 infractions. My testimony today focuses on the legal mandate that schools provide the necessary positive behavioral supports for students with disabilities and the need to revise the discipline code to reflect this mandate.

As you may know, for the past several years, we have been meeting regularly with the Department of Education's Office of Safety and Youth Development to discuss revisions to the Discipline Code to reduce the overuse of suspensions to address students' behavioral issues, particularly minor misbehavior, and to expand the use of positive behavioral interventions and supports. Indeed, these goals align with those of the New York City School-Justice Partnership Task Force, which issued its

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recommendations last week, calling for an increase in positive, alternative approaches to discipline to stem the tide of students of color and those with disabilities entering the criminal and juvenile justice systems each year – and help these youth stay in school and attain better academic outcomes.

We are pleased that the draft of the Citywide Standards of Intervention and Discipline Measures adds important information concerning Functional Behavior Assessments (FBAs) and Behavior Intervention Plans (BIPs) for students with disabilities. However, the information included in the draft Discipline Code is incomplete and misleading.

First and foremost, the draft Discipline Code should classify FBAs and BIPs as mandatory guidance interventions for students with disabilities. While students with disabilities make up 12% of the student population in New York City public schools, they receive almost 1/3 of all suspensions and are losing valuable instruction time instead of receiving necessary and appropriate FBAs and BIPs to address their behavior. Consequently, two months ago in April, Advocates for Children filed a complaint with the New York State Education Department against the New York City Department of Education for its failure to provide students with disabilities the necessary behavioral supports mandated by law.

Second, while the draft Discipline Code appropriately states that an FBA must be conducted or updated following a finding that a student's behavior was a manifestation of his or her disability, the draft fails to include any other instances



where schools must conduct an FBA. Moreover, many school administrators and teachers do not know the legal mandates for an FBA and BIP to ensure that students receive the appropriate behavioral supports and the draft code provides insufficient guidance on what an FBA and BIP must include. Therefore, we strongly recommend that the Department of Education revise the Discipline Code to make clear that schools must conduct FBAs and BIPs and must include specific information in the FBAs and BIPs.

We also highly recommend that the DOE implement a rigorous training program for school staff that focuses on the creation of comprehensive FBAs and BIPs and provide school staff the resources to actually implement them. To reinforce the training, the DOE should also include in the Discipline Code a website link to comprehensive materials, including state guidance documents, tools, and forms. It is not enough to describe FBAs and BIPs in documentation; the DOE must ensure that all schools develop individualized and comprehensive FBAs and BIPs. Without appropriate training, these supports and interventions meant to target specific behaviors are ineffective and students, especially those with disabilities, suffer academically and behaviorally.

In addition to what I have said today, we will be submitting more detailed, written comments and recommendations in the coming days. Thank you, again, for the opportunity to testify.