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WHAT HAPPENS TO THE “BAD APPLES”:  
AN EMPIRICAL STUDY OF SUSPENSIONS IN  
NEW YORK CITY SCHOOLS

*Peter H. Schuck, Matthew Matera & David I. Noah\**

INTRODUCTION

The current study grows out of earlier research—conducted by one of us (with a collaborator) and published in book form<sup>1</sup> in 2006—on the following problem: In many public programs that seek to improve social conditions and increase opportunity for low-income people, a relatively small number of participants, whom the study termed “bad apples,”<sup>2</sup> so severely disrupt those programs that they prevent the rest of the participants from gaining the programs’ full benefits. The public school system is the most important venue in which the bad apples problem occurs, and the current study seeks to increase our understanding of how the system tries to manage this problem.

Roughly 1.1 million students are enrolled in the New York City public schools each year.<sup>3</sup> Over the period spanning the 2005–06 and 2009–10 school years, the schools issued 323,680 suspensions, or

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1 PETER H. SCHUCK & RICHARD J. ZECKHAUSER, *TARGETING IN SOCIAL PROGRAMS*, 81–87 (2006).

2 *See id.* at 76, 77–80 (defining bad apples as “an individual whose irresponsible, immoral, or illegal behavior in the past—and likely the future as well—causes good apples in a particular program to benefit less than they otherwise would”).

3 *About Us*, NYC DEP’T OF EDUC., <http://schools.nyc.gov/AboutUs/default.htm> (last visited May 14, 2012).

about 64,736 a year.<sup>4</sup> This works out to significantly less than 5.9% of the total enrolled students in the system during those five years because many of the suspended students were repeat offenders. These suspended students are responsible for a great deal of the time, energy, money, and other resources that the system expends on student discipline and classroom management. Even more importantly, they are presumably responsible for much of the disruptive behavior that impedes classroom learning for all students.

Past studies have found that the New York City school system has higher suspension rates for students of color, students who are male, and students with special needs.<sup>5</sup> The system also may fail to ensure that all students, even the more disruptive ones, receive the support they need to succeed academically or to at least complete high school. This study attempts to probe more deeply into the data on suspensions in New York City and to learn how schools use suspensions (to improve behavior, to aid classroom management, to improve test scores, etc.) and, thus, to consider whether and how they can use suspensions more effectively—for example, by issuing them more or less frequently or in different ways.

The introduction that follows, taken verbatim from an earlier project,<sup>6</sup> presents some necessary background for the current study:

Widespread, intense concern about the harmful effects of disruptive students on their peers is evident in public opinion polls and surveys of both teachers and students. This finding is hardly surprising. The externality and public good aspects of classroom education mean that just as students can learn from each other as well as from their teachers, so too can one student's misconduct quickly cascade through the classroom, thereby reducing learning for all.<sup>7</sup>

For purposes of this discussion, we call such chronically disruptive students “bad apples.”

Although disruptive behavior and discipline problems can be defined in different ways, data sets in this area often distinguish among four crude categories of misconduct: disruption, nonserious violence, violence, and criminal violence.<sup>8</sup> According to one report, more than seventy-seven percent of public elementary and secondary schools suffered at least one violent incident (as defined in the report) during the 1999–2000 year, and students were more likely to

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4 Data provided on request by the New York City Department of Education, and it is on file with the authors.

5 *Id.*

6 SCHUCK & ZECKHAUSER, *supra* note 1, at 80–98.

7 *Id.* at 81.

8 *See id.*

fear being attacked at school than being attacked when away from school.<sup>9</sup> Schools that reported a large number of serious discipline problems were more likely to experience violent criminal incidents, including rape, sexual battery, physical attacks, and robbery.<sup>10</sup>

Not surprisingly, the risk of encountering violence in school is concentrated in poor areas and is greatest for economically disadvantaged students.<sup>11</sup> Some believe that noncriminal incidents, which are of course far more common than violent crime, are more responsible for disrupting the educational environment and making it more difficult for students to learn.<sup>12</sup> There are also suggestions that officials, at least in New York City, under-report violent and disruptive incidents in the public schools.<sup>13</sup>

In a May 2004 study, a third of the teachers surveyed said that because of student discipline problems, they had either considered leaving or knew colleagues who had left the profession.<sup>14</sup> Almost twenty percent of parents reported that discipline problems had caused them to consider moving their child to another school or that they had already done so.<sup>15</sup> Nearly eight in ten teachers (seventy-eight percent) said that their school had students who should be removed and sent to alternative schools.<sup>16</sup> The same percentage reported that students are quick to remind them that they have rights or that their parents can sue.<sup>17</sup> A majority of teachers (fifty-five percent) said that discipline problems were also the result of school officials backing down in the face of assertive parents. The survey found that parents and teachers favored allowing discipline-related lawsuits

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9 JILL F. DEVOE ET AL., INDICATORS OF SCHOOL CRIME AND SAFETY: 2002, 32, 65 (Nat'l Ctr. for Educ. Statistics, 2002), available at <http://bjs.ojp.usdoj.gov/content/pub/pdf/iscs02.pdf>

10 AMANDA K. MILLER & KATHRYN CHANDLER, VIOLENCE IN U.S. PUBLIC SCHOOLS: 2000 SCHOOL SURVEY ON CRIME AND SAFETY 4, 19–20 (Nat'l Ctr. for Educ. Statistics, 2003).

11 *Id.* at 39, 57–58.

12 See Susan Saulny, *Noncrime Disturbances Rise at Tough Schools*, N.Y. TIMES, Aug. 3, 2005, at B8.

13 David M. Herszenhorn, *Data on Violence in City Schools Is Questioned*, N.Y. TIMES, June 13, 2006, at B6.

14 PUB. AGENDA, TEACHING INTERRUPTED: DO DISCIPLINE POLICIES IN TODAY'S PUBLIC SCHOOLS FOSTER THE COMMON GOOD? 10 (2004), available at [http://publicagenda.org/files/pdf/teaching\\_interrupted.pdf](http://publicagenda.org/files/pdf/teaching_interrupted.pdf).

15 *Id.* at 53.

16 *Id.* at 14.

17 *Id.* at 23.

only in cases where serious sanctions like expulsion are imposed and that in such cases monetary awards against schools should be barred.<sup>18</sup>

Although some federal and state laws address the problem of chronic disruption by a small core group of students, most policy responses occur at the local school district or individual school level.<sup>19</sup> These responses include: rules at the level of the school district or school and a number of practices, such as the use of metal detectors and hallway monitors; specific modes of punishment, such as corporal punishment (especially in the South); removal of the disruptive students from the classroom; and placement of the disruptive students in alternative schools.<sup>20</sup> A number of the alternative schools serving these removed students offer crisis or behavioral intervention.<sup>21</sup> Nevertheless, the fragmentary evidence suggests that many efforts to remove violent and chronically disruptive students fail at that task and that the removals that do occur are often not timely.<sup>22</sup>

A recent study by Richard Arum of the discipline problem in public schools places much of the blame on judicial decisions that broadly extended due process rights to students in public schools, as well as on an increase in related educational regulations and legislation that have constrained the authority of teachers and school administrators and often prevented them from taking prompt and effective action to curb disruptive behavior.<sup>23</sup> In particular, the Supreme Court's 1975 decision in *Goss v. Lopez*,<sup>24</sup> involving students suspended for fighting in the lunchroom, extended due process rights—there, notice and an opportunity to be heard—even to students facing relatively minor school discipline, such as suspensions of ten days or less.<sup>25</sup> Presumably, students facing more serious discipline, such as expulsion or transfer to alternative programs, had more extensive procedural rights.

Post-*Goss* court decisions have held that the constitutionally required hearing for a short-term suspension is minimal; one commentator insists that *Goss* would be satisfied by “a three-minute due

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18 *Id.* at 32.

19 SCHUCK & ZECKHAUSER, *supra* note 1, at 82.

20 *Id.*

21 BRIAN KLEINER, PUBLIC ALTERNATIVE SCHOOLS AND PROGRAMS FOR STUDENTS AT RISK OF EDUCATION FAILURE: 2000–01, 6, 10, 23, 27 (Nat'l Ctr. for Educ. Statistics, 2002).

22 See Elissa Gootman, *Gotbaum Says City is Failing to Remove Violent Students*, N.Y. TIMES, Jan. 14, 2005, at B2.

23 See generally RICHARD ARUM, JUDGING SCHOOL DISCIPLINE (2003) (examining the extent to which judicial court decisions have affected public school discipline).

24 419 U.S. 565 (1975).

25 *Id.* at 581.

process [hearing].”<sup>26</sup> She suggested that due process would be satisfied if the school officials tell the student the charge, give the student the opportunity to tell his/her side of the story, listen, and make a decision.<sup>27</sup> The *Goss* hearing need not include written notice, pre-suspension notification of parents, an opportunity for parents to tell their side of the story, time to prepare a presentation, a right to counsel, a right to offer or cross-examine witnesses, or a right to appeal the decision. Nonetheless, state law and local school board policies often provide students with additional procedural rights. Some courts, state laws, and administrative policies have even extended these rights to in-school suspensions or isolation, as well as out-of-school suspensions shorter than that involved in *Goss*. This “due process creep,” as this commentator has called it,<sup>28</sup> may encourage misconduct by making it much more costly for school officials to impose discipline.

The Individuals with Disabilities Education Act (IDEA),<sup>29</sup> enacted in the same year as *Goss*, conferred further substantive and procedural rights on students with disabilities. The statute defines disabilities to include mental retardation, hearing impairments including deafness, speech or language impairments, visual impairments including blindness, emotional disturbance, orthopedic impairments, autism, traumatic brain injury, other health impairments, specific learning disabilities, multiple disabilities, or developmental delay.<sup>30</sup> Students with these disabilities need special education and related services.

Subsequent amendments to IDEA, most recently in December 2004, expanded the rights of disabled students, notably in discipline cases. Since IDEA’s purpose is to mainstream special education students into the “least restrictive environment,”<sup>31</sup> it limits schools’ ability to remove disabled students from the classroom, particularly when their misconduct stems from their disability. Although this is a noble goal, the statute has had the severe unintended side effect of inhibiting the removal of bad apples, thereby blighting the educations of vast numbers of good apple students.

IDEA does not seriously impede removals for short periods.<sup>32</sup> Schools may suspend disabled students for less than ten days for whatever reason, as long as the suspension would be appropriate for

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26 Julie Underwood, *The 30th Anniversary of Goss v. Lopez*, 198 EDUC. L. REP. 795, 797 (2005).

27 *Id.* at 799.

28 *Id.* at 800.

29 20 U.S.C. § 1400 (2006).

30 20 U.S.C. § 1401(3)(A) (2006).

31 SCHUCK & ZECKHAUSER, *supra* note 1, at 83.

32 *See* 20 U.S.C. § 1400.

similarly situated nondisabled students.<sup>33</sup> Thus, short-term suspension remains an option even when the misconduct stems directly from the student's disability. For violations related to weapons, drugs, or serious bodily injury, schools can also remove a special needs child for up to forty-five days to an interim educational setting.<sup>34</sup>

Under the statute, schools cannot remove a disabled student from public school for more than ten consecutive days for disruptive behavior that falls short of "serious misconduct" and that is deemed to have arisen from the student's disability.<sup>35</sup> When such a situation arises, the school must conduct a "manifestation hearing" in which the parent bears the burden of proof that the disability caused the misconduct.<sup>36</sup> (Until July 2005, the school bore the burden of proving that the misconduct was not disability related.)<sup>37</sup> In addition, parents are statutorily entitled to a due process hearing to vindicate the child's right to a "free" and "appropriate"<sup>38</sup> public education.<sup>39</sup> Under IDEA, if the misconduct did not arise from the disability, then the school may suspend the student, but must still provide an interim alternative education program that provides the instruction that the student needs to make effective progress.<sup>40</sup> In addition to this federal statute, forty-one states (as of 2000) had passed laws establishing the reasons for which students can be expelled or suspended, and forty-nine had laws setting grounds for expulsion.<sup>41</sup>

Under IDEA, two problems for school authorities remain: showing that disruption was not due to disability (which has been very broadly defined) and providing quality education to others despite the presence of disruptive students whose misbehavior is determined to be disability-related.<sup>42</sup> In practice, suspensions are very infrequent and expulsions exceedingly rare, despite the widespread disruptive behavior. The U.S. Department of Education provides the most comprehensive nationwide data on suspensions and expulsions based on

33 See 20 U.S.C. § 1415(k)(1)(B) (2006).

34 See 20 U.S.C. § 1415(k)(1)(G) (describing the authority of school personnel in special circumstances).

35 See 20 U.S.C. § 1415(k)(1)(B).

36 See 20 U.S.C. § 1415(k)(1)(F).

37 SCHUCK & ZECKHAUSER, *supra* note 1, at 84.

38 See 20 U.S.C. § 1400(d)(1)(A) (2006) (describing one of the purposes of the statute as to ensure that all children with disabilities have available to them a "free appropriate public education").

39 See 20 U.S.C. § 1415(f)(1)(A).

40 See 20 U.S.C. § 1415(k)(1)(C).

41 ADVANCEMENT PROJECT, OPPORTUNITIES SUSPENDED: THE DEVASTATING CONSEQUENCES OF ZERO-TOLERANCE AND SCHOOL DISCIPLINE 39 (2002).

42 SCHUCK & ZECKHAUSER, *supra* note 1, at 84.

reports from 88,000 schools for the 2000–01 school year.<sup>43</sup> Of the 46,300,000 students in the database, 6.6% received out-of-school suspensions, and only 0.21% were expelled.<sup>44</sup> The suspension rate varied from state to state. In North Dakota, 2.4% of students were suspended; in South Carolina, the figure was 14.6%. For expulsions, the rate across states ranged from zero to just under 0.8%.<sup>45</sup> Thus, the bad apples who are removed even temporarily appear to comprise only a small fraction of the bad apple populations within schools.

Disabled students protected by IDEA and other such laws are seldom suspended or expelled from public schools.<sup>46</sup> Approximately 1.4% of the almost six million students considered disabled and receiving services under IDEA (who in turn constitute about twelve percent of all students) were removed for a period greater than ten days during 2000.<sup>47</sup> A U.S. Government Accountability Office (GAO) study, based primarily on a survey of middle and high school principals in a limited number of states, found that the rate of incidents of serious misconduct—violent behavior, drugs, weapons, firearms—was more than three times higher among students with disabilities than among regular education students (fifty per thousand versus fifteen per thousand).<sup>48</sup> In both groups, 60 to 65% of students who engaged in serious misconduct were given out-of-school suspensions, and about one in six was expelled.<sup>49</sup> The main difference was that a higher proportion of expelled special education students received post-expulsion education services.<sup>50</sup> In addition to the IDEA rules, many local school districts (86% of those responding to the GAO survey) have adopted their own protections for disabled students on top of IDEA rules; these additional protections, often imposed by court-mandated consent decrees, obviously restrict disciplinary actions even more.<sup>51</sup> Almost two-thirds of principals reported that they operate under a local policy that prevents them from suspending special education students for more than ten cumulative days in a school year.<sup>52</sup>

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43 U.S. DEP'T OF EDUC., OCR ELEMENTARY AND SECONDARY SCHOOL SURVEY: 2000 (on file with authors).

44 *Id.*

45 *Id.*

46 SCHUCK & ZECKHAUSER, *supra* note 1, at 84.

47 U.S. DEP'T OF EDUC., *supra* note 43 (on file with authors).

48 U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-01-210, STUDENT DISCIPLINE: INDIVIDUALS WITH DISABILITIES EDUCATION ACT 15–20 (2001).

49 *Id.* at 6.

50 *Id.* at 16.

51 *Id.* at 7.

52 *Id.*



We suspect, but the existing data cannot demonstrate, that disruptive students who are not disabled and thus are not covered by IDEA can nonetheless take advantage of the constraints on disciplinary action that IDEA imposes on schools. Principals surely have more difficulty expelling student A, who is not covered by IDEA, when student B, who is covered by it, committed the same or worse infraction and because of the law was not expelled. Presumably, bad apple students—those who are protected by the law and those who are not—quickly learn about such disparities through the notoriously effective grapevine that exists in schools. One would expect them, as the notion of moral hazard suggests, to take these disparities into account in deciding how to behave.<sup>53</sup>

Students are increasingly likely, through their parents, to challenge their school-imposed punishments in the courts. This trend, which has been facilitated by changes in the law governing school discipline that began in the 1990s, has greatly complicated the problem of school discipline.<sup>54</sup> Urgent public concern about disruptive and violent students possessing and selling weapons and drugs in the public schools led many states and school districts to adopt zero-tolerance disciplinary policies, often in the form of administrative rules that authorize or require school officials to impose a specific punishment, usually expulsion or long-term suspension, for certain types of infractions. At the same time, however, Congress was enacting laws protecting disabled individuals against discrimination in public programs and was also expanding the IDEA rights of disabled students (among those most likely to misbehave) to avoid school discipline for disability-related misbehavior.<sup>55</sup>

The effects of this collision between public policies such as zero-tolerance that increase schools' disciplinary options and other policies that limit those options by enlarging students' rights have recently been studied by Richard Arum and his associates.<sup>56</sup> They find that these policy changes, which created an ambiguous legal regime surrounding school discipline, were followed by an unprecedented upsurge in lawsuits over school discipline.<sup>57</sup> In this litigation, the courts tended to uphold the schools in cases involving zero-tolerance discipline, but favored the students in those cases where they also claimed disability. Not surprisingly, it was the more affluent parents

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53 SCHUCK & ZECKHAUSER, *supra* note 1, at 85.

54 *Id.*

55 *Id.*

56 *Id.*

57 *Id.*

who were more likely to litigate these cases in the appellate courts.<sup>58</sup> Complaints about this new legal regime have centered on multiple and violent offenders whom the schools could not quickly remove and who therefore remained to terrorize their classmates.<sup>59</sup>

What happens to misbehaving students who are removed from school? According to a GAO report on special needs students, removed students’ short-term placements (fewer than ten days) were primarily either in in-school suspension rooms or at home, but those students removed for more than ten days were primarily placed in alternative schools or homebound placements.<sup>60</sup> As amended, IDEA mandates that disabled children receive a functional behavior assessment, behavioral intervention services, and modifications designed to address the misconduct; it does not require any reintegration services to prepare removed students for a return to their traditional educational settings.<sup>61</sup> Under New York City law, however, students who are released from alternative programs must be placed in mainstream schools within five days of applying, and no school can turn them away.<sup>62</sup> This entitlement or “right of return” helps to explain why disruptive preschoolers, who ordinarily have no entitlement to preschool education, are expelled from their programs in much higher proportions than are their disruptive elders.<sup>63</sup>

Unfortunately, we know less about alternative arrangements for non-disabled students. Many states and localities offer alternative educational programs for students who are expelled or suspended from school. As of 2000, eleven states required that school districts make alternative education opportunities available to suspended or expelled students.<sup>64</sup> In thirty-nine states, school districts had discretion to establish such programs.<sup>65</sup> Alternative school programs are controversial. For decades, some policymakers and educators have insisted that alternatives to the traditional school model are required

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58 *Id.* at 86.

59 *See* Gootman, *supra* note 22, at B2.

60 U.S. GOV’T ACCOUNTABILITY OFFICE, GAO-03-550, SPECIAL EDUCATION: CLEARER GUIDANCE WOULD ENHANCE IMPLEMENTATION OF FEDERAL DISCIPLINARY PROVISIONS 7 (2003).

61 *See* 20 U.S.C. § 1415(k)(1)(D)(ii) (2006) (describing the services required for placement in alternative educational setting).

62 Susan Saulny, *Students Sue School System, Claiming Denial of Education*, N.Y. TIMES, Dec. 21, 2004, at B3.

63 *See* WALTER S. GILLIAM, PREKINDERGARTENERS LEFT BEHIND: EXPULSION RATES IN STATE PREKINDERGARTEN SYSTEMS 1 (2005) (finding that the prekindergarten expulsion rate is 3.2 times the rate for K–12 students).

64 ADVANCEMENT PROJECT, *supra* note 41, at 12.

65 *Id.*

to meet the needs of all students, including those with chronic behavioral problems.<sup>66</sup> However, critics claim that “many alternative schools are no more than holding pens for children considered to be troublemakers,” where children are mistreated and denied adequate instruction.<sup>67</sup>

In addition, the costs of providing alternative instructional services to expelled students are substantial. The American Federation of Teachers (AFT) estimated that it cost an additional \$1750 on average for a disruptive student to attend an alternative school.<sup>68</sup> But the AFT also found benefits that more than offset these additional costs: “the public annually gains \$14,000 in student learning time that would have been lost, \$2800 in reduced grade repetition costs, \$1750 in reduced welfare costs, and \$1500 in reduced prison costs” from such a placement.<sup>69</sup> The AFT determined that when one hour of instructional time per day is lost to disruption, the cost is \$23,429 a class per year (based on the national average cost of \$5623 per pupil-year); for each student whom an alternative program prevents from having to repeat a grade, the cost saving is \$5623; the average cost to incarcerate an inmate in local jails in 1993 was \$14,667 a year; and federal prison costs average \$22,773 an inmate-year.<sup>70</sup>

These estimates—though obviously from an interested source—show that bad apple students inflict significant harm on good apples and on the system. Much better information is desperately needed concerning these harms. Data are also needed on the variety of alternative programs to which bad apple students can be transferred, the costs and benefits of these programs, the period of time students remain in them, the degree of success of these programs in modifying bad apple behaviors and returning the transferred students to mainstream classes, the handling of disciplinary problems arising in the alternative programs, and error rates in student classifications. Separate study is required to determine to what extent IDEA actually creates externalities that affect non-IDEA students and that jeopardize other aspects of program performance. Finally, policymakers should consider whether the procedures now being afforded to students accused of bad apple conduct before they can be removed are slower, more costly, and more onerous than actually required by due process, as defined by the courts and by considerations of fairness, accuracy,

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66 SCHUCK & ZECKHAUSER, *supra* note 1, at 86.

67 ADVANCEMENT PROJECT, *supra* note 41, at 12.

68 U.S. DEP'T OF EDUC., CREATING SAFE AND DRUG-FREE SCHOOLS: AN ACTION GUIDE 65 (1996).

69 *Id.*

70 SCHUCK & ZECKHAUSER, *supra* note 1, at 87.

and the need to protect good apples. Some commentators, at least, think that this is the case.<sup>71</sup>

At the time of the previous project, persistent efforts were made to obtain existing data on some of these points from two public school systems: New York City and New Haven. These efforts were stymied by a combination of factors: concerns about the effect of disclosure on pending or future litigation against the systems, fear of adverse publicity about a politically sensitive area in which the systems are struggling to cope with very difficult challenges, and other more narrowly bureaucratic considerations. Whatever the reasons for denying us access to the data, filling this particular information vacuum should be a priority for policy planners.<sup>72</sup>

The remainder of this paper describes our current study. Part I of the paper summarizes its background, purpose, and methodology. Part II discusses the state of existing knowledge concerning student suspensions in NYC and elsewhere. Part III explains the legal-administrative process for suspending students from NYC high schools. Part IV presents our major findings so far. Part V discusses next steps in the research.

## I. BACKGROUND, PURPOSE, AND METHODOLOGY

The authors are one of the co-authors of the earlier study (Schuck) and two lawyers, both former teachers who are involved in education reform (Matera and Noah).<sup>73</sup> In an effort to extend the research on the “bad apples” problem, we commenced the current study of suspensions.

Suspensions play a central role in the management of the bad apple problem. Precisely because the stakes are so high—both for the quality of the classroom experience of the other students and for the individuals who receive this sanction—suspension practices raise a host of difficult issues for the school system. These issues, among others, include the legal requirements of due process to students and their families; the need to protect the educational integrity, physical safety, and ethical standards of the classroom environment for students and teachers; the effect of this environment on the system’s ability to recruit and retain high-quality teachers and students from middle-class families; the effect of suspensions on the future life chances of the sanctioned students; public confidence in the quality

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71 See Underwood, *supra* note 26, at 800.

72 SCHUCK & ZECKHAUSER, *supra* note 1, at 87.

73 Schuck is a law professor at Yale; Matera and Noah joined this project while law students at Yale.

of the school system; and of course, the effectiveness of the suspension sanction in achieving its intended purposes.

The study has two objectives. First, we seek to understand the parameters of the bad apples problem in NYC's public school system and how the system attempts to "manage" this problem through school suspensions. Such understanding will also reveal whether and to what extent the "system" functions with consistency. More specifically, we want to learn more about the number and students who are suspended; the reasons for the suspensions; repeat suspensions of the same students; suspended students' test scores and other characteristics; the distribution of suspensions among different schools in the system; and so forth. Most of the disciplining of students, of course, is administered by teachers in their classrooms. Where student misconduct becomes too threatening or disruptive, however, more serious sanctions are sometimes employed, including suspensions and expulsions. The process that culminates in this sanction is described in Part III.

Second, we hope to shed light on what happens to students *after* they are suspended. Do they go to alternative schools in the system? Return to the regular schools? Join the military or the civilian work force? Enter the juvenile or adult criminal justice systems? Move to different communities? Disappear from view? For reasons discussed in Part V, we have not yet begun to pursue this second objective, but we have made considerable progress with the first.

In 2007, at the outset of the study, we requested that the New York City Department of Education (NYCDOE) provide data going back to the 2005–2006 school year on various parameters of the "superintendent's suspensions" imposed on students in the city's public schools. NYCDOE agreed to do so and has provided the same data for subsequent years. At present, we have collected suspension data covering the period from 2005–2010, and hope to receive the data for 2010–2011 soon. For each of the system's schools for which we have data,<sup>74</sup> the data for each academic year includes the total number of enrolled students; the number of suspensions; the average test scores for that school; the specific test scores of the individual students who were suspended in that year; the number of times each individual student was suspended; and information about whether a suspension was

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74 The number of schools in the data set has varied, *see supra* note 5. NYCDOE reported information about 1509 schools in 2005–2006 and 2006–2007; 1302 schools in 2007–2008; 1359 schools in 2008–2009; and 1406 schools in 2009–2010.

a Principal’s Suspension or a Regional Superintendent’s Suspension.<sup>75</sup>

## II. STUDIES OF SUSPENSION PRACTICES

When we commenced this study, we could find no systematic compilation, analysis, and publication of data on suspensions from the New York City schools, much less an account of how they are handled.<sup>76</sup> Just last month, NYCDOE itself released extensive data about the 2010–2011 school year, leading to more discussion of correlations with race and special needs status,<sup>77</sup> as well as income status.<sup>78</sup> And earlier this year the New York Civil Liberties Union (NYCLU) reported a major study of suspensions in the New York City schools.<sup>79</sup> The NYCLU focused on tracking the overall increase in the number of suspensions over time, despite a contemporaneous drop in student enrollment; on the disproportionate number of suspensions given to African American students and students with disabilities; and on the growing number of “zero-tolerance” offenses in the New York City reg-

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75 Our data set generally only includes information about schools where at least one suspension was issued in a year. We tried to reconcile this data with a separate data set listing school enrollment for each year, but sometimes it was unclear if a school had zero suspensions or was simply closed. In addition, sometimes enrollment seemed to be declining or increasing rapidly, likely because a particular school was being phased out or phased in. We have attempted to control for these possibilities, but our data set is imperfect. The data that we received was often in a different format from year to year; for example, one year of data might have every single suspension displayed in a separate row in a data table while another year of data might have a separate row for each unique suspended student. We sought to standardize the data format so that we could make comparisons across years, and, although we have confidence in the accuracy of the data overall, there may still be some minor errors in calculation or compilation. When we complete the study, we will have validated all of the data for accuracy.

76 An extensive body of research demonstrates that minority students, male students, low-income students, and students with special needs are suspended more often. See, e.g., DANIEL J. LOSEN & RUSSELL J. SKIBA, *SUSPENDED EDUCATION: URBAN MIDDLE SCHOOLS IN CRISIS* (2010), available at [http://civilrightsproject.ucla.edu/research/k-12-education/school-discipline/suspended-education-urban-middle-schools-in-crisis/Suspended-Education\\_FINAL-2.pdf](http://civilrightsproject.ucla.edu/research/k-12-education/school-discipline/suspended-education-urban-middle-schools-in-crisis/Suspended-Education_FINAL-2.pdf).

77 See Geoff Decker, *For First Time, DOE Details School Safety, Suspension Numbers*, *GOTHAM SCHOOLS* (Nov. 1, 2011, 9:00 PM), <http://gothamschools.org/2011/11/01/for-first-time-doe-releases-detailed-school-safety-data/>.

78 See Udi Ofer, *Reporting on School Suspensions is the First Step*, *SCHOOLBOOK*, N.Y. TIMES (Nov. 7, 2011, 10:00 AM), <http://www.nytimes.com/schoolbook/2011/11/07/reporting-on-student-suspensions-is-the-first-step/>.

79 NEW YORK CIVIL LIBERTIES UNION, *EDUCATION INTERRUPTED: THE GROWING USE OF SUSPENSIONS IN NEW YORK CITY’S PUBLIC SCHOOLS* (2011), available at [http://www.nyclu.org/files/publications/Suspension\\_Report\\_FINAL\\_noSpreads.pdf](http://www.nyclu.org/files/publications/Suspension_Report_FINAL_noSpreads.pdf).

ulations governing school districts. The NYCLU study, which recommended reducing the number of zero-tolerance offenses and increasing the use of alternatives to suspension,<sup>80</sup> is the latest in a series of important studies that demonstrate that students of color, male students, and students with special needs are suspended disproportionately. The NYCLU study also found, intriguingly, that a large number of suspensions are issued in March and June of each academic year.

Our findings are consistent with the NYCLU's findings in many ways. For example, we found that Hispanic, and particularly black students, are overrepresented among suspended students, as are male students.

FIGURE 1

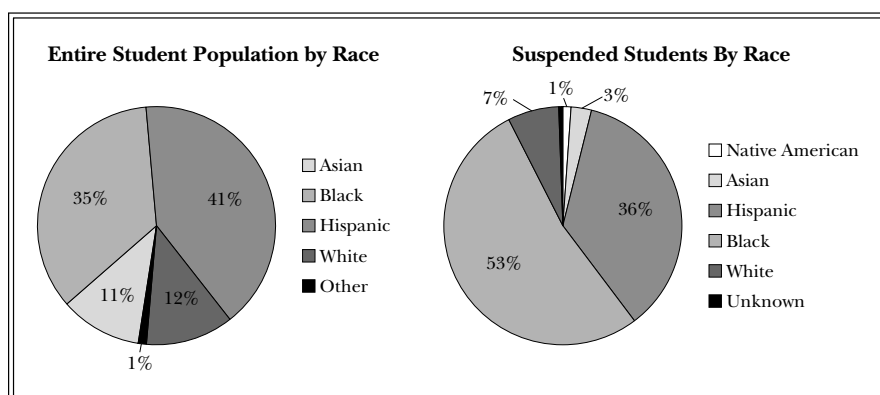
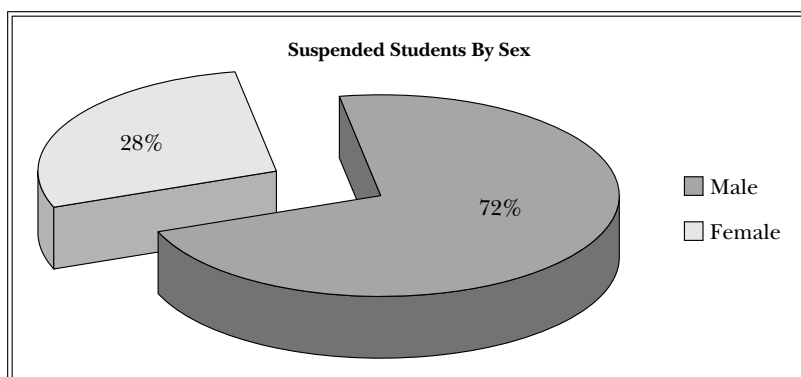


FIGURE 2



80 *Id.* at 26–27; see also Anna M. Phillips, *Calming Schools by Focusing on Well-Being of Troubled Students*, N.Y. TIMES, Nov. 15, 2011, at A28 (discussing Turnaround for Children, a nonprofit organization that focuses on students' psychological and emotional well-being, as a potential alternative to suspension).

The NYCLU data and analysis are important. But, we hope to go behind and beyond that study's work in order to determine how schools actually use suspensions to manage behavior and how these methods affect both the students who are suspended and the rest of the school community. The NYCLU study, for example, seems to assume that suspensions are undesirable and that the best, most rational school system will have the fewest suspensions, perhaps ideally none.

If that is its assumption, we disagree with it. Suspension may be a useful, even essential, tool. First, by removing the students who are acting as "bad apples," it can enable the vast majority of students to learn without undue disruption. Second, suspensions may deter individual students from future misbehavior, either because of their internal determination to do better or because of pressure from home. Third, suspensions may deter other students from serious misbehavior once they see the dire consequences of such misbehavior. This is not to deny, of course, the possibility that (as the NYCLU study concluded) suspensions may be inconsistently or arbitrarily imposed, or that they may, because of other features of the suspension system, end up depriving suspended students of access to an effective (and constitutionally required) educational program. Absent the kind of study we have undertaken, one cannot assess the system with confidence. Rather, one can only speculate based on untested assumptions.

Suspension policies cannot be criticized, understood, assessed, or improved unless we know how the New York City schools actually use suspensions and what effects these suspensions have on individuals and schools as a whole. It is established that some demographic groups of students are more likely to be suspended than are others.<sup>81</sup> But other important questions remain to be investigated: How many individual students are suspended two times or more in a year? To what extent is suspension tantamount to expulsion? Do students and families receive the procedural protection prescribed by the city's regulations? Is that procedural protection excessive, all things considered, as Arum suggests?<sup>82</sup> How much variation is there in suspensions over time in the system as a whole and in individual schools? In a given time period, how much variation is there among individual schools? Do different administrators suspend students more or less frequently and why? How do suspensions correlate with test scores at

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81 See NEW YORK CIVIL LIBERTIES UNION, *supra* note 79, at 3.

82 See ARUM, *supra* note 23, at 1–37 (examining the extent to which judicial court decisions have affected the use of procedural processes in public school discipline).



both the individual and the school levels? Are such correlations causal, and if so, which way does the causal arrow point?

### III. THE FORMAL SUSPENSION PROCESS

The formal process for issuing suspensions is detailed in the Chancellor's Regulations of the New York City Department of Education, in state regulations, and in the city's discipline code.<sup>83</sup> Here, we describe the process as set forth in the Chancellor's Regulations, which establish a quasi-judicial set of rules and policies.

The regulations first detail how students are to be removed from a particular class. In this process, a principal has substantial discretion to remove students from class for one to four days without suspending them.<sup>84</sup> This shorter removal period, usually termed an "in school action," may help to maintain an orderly learning environment, but these removals are difficult to track,<sup>85</sup> and they are not recorded as suspensions.

The regulations provide for two types of suspensions with similar but distinct procedures.<sup>86</sup> For both types, a student must not stay home but instead report to school and be in an alternative setting, or report to an alternative site.<sup>87</sup> Students with diagnosed disabilities enjoy special protections in disciplinary proceedings, as mentioned above, but this report will focus on the process for students in the general-education population.

A Principal's Suspension of one to five days may, as the name suggests, be issued on the principal's own authority without prior authorization from district leadership (see fig. 3).<sup>88</sup> For students below the fourth grade, however, the principal must obtain the prior approval of the relevant regional superintendent.<sup>89</sup> Written notice to home is required and a conference must be scheduled between the

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83 See NEW YORK CIVIL LIBERTIES UNION, *supra* note 79, at 8–11 (providing a broad overview of the way in which these documents regulate suspension in New York City).

84 NEW YORK CITY DEP'T OF EDUC., REGULATION OF THE CHANCELLOR A-443 22 (2004) [hereinafter REGULATION A-443].

85 See NEW YORK CIVIL LIBERTIES UNION, *supra* note 79, at 10 n.9. The NYC regulations, however, indicate that principals are supposed to track this information. REGULATION A-443, *supra* note 84, at 17.

86 REGULATION A-443, *supra* note 84, at 19–52 (detailing the procedures regarding the two types of suspensions, Principal's Suspensions and Regional Superintendent's Suspensions).

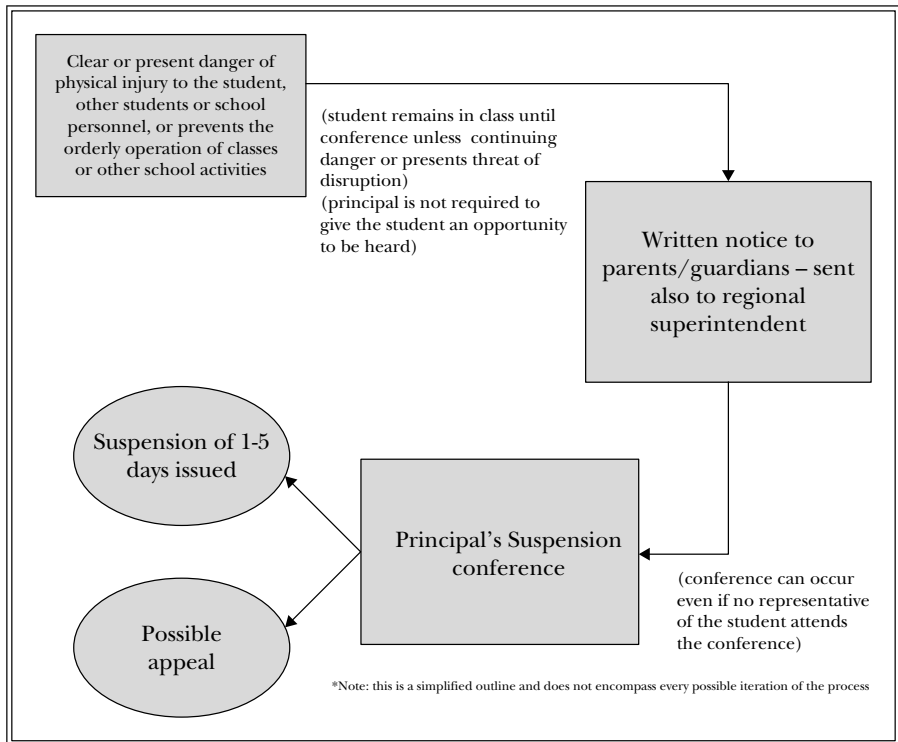
87 *Id.* at 19–20 (discussing the requirements of alternative instruction).

88 *Id.* at 22.

89 *Id.* at 21.

principal and the student’s parents or guardians.<sup>90</sup> Nevertheless, the conference may proceed even if neither the suspended student nor his or her parents attend, so long as the principal attends.<sup>91</sup> This implies (if this rule is consistently followed) that the benefits of each suspension must outweigh the time and other resources that the principal must spend on this matter.

FIGURE 3. PRINCIPAL’S SUSPENSION PROCESS

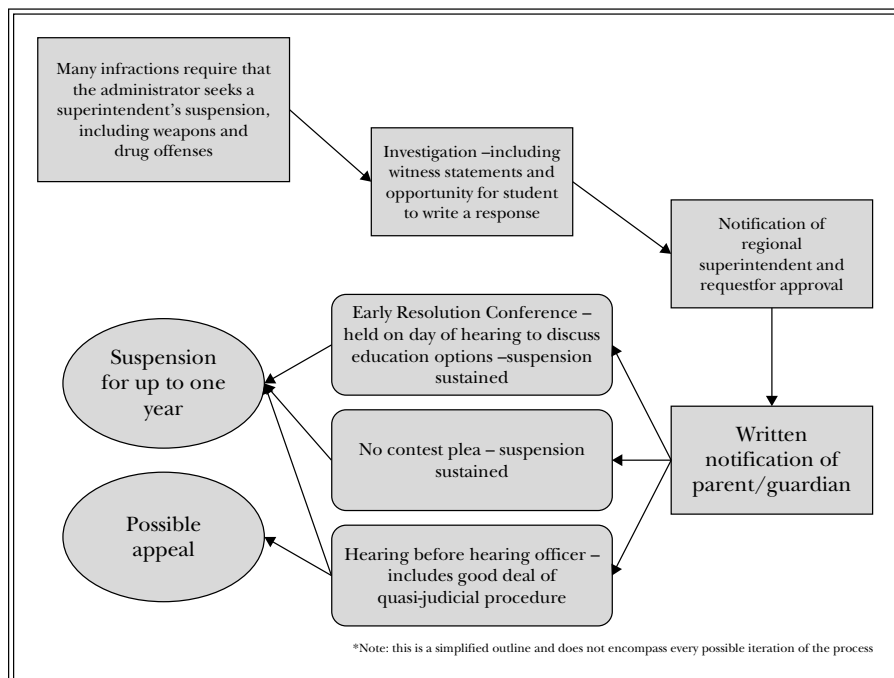


A Regional Superintendent’s Suspension, the response to more serious misbehavior, may last as long as a year.<sup>92</sup> This process is more complex and formal, and provides for a hearing before a hearing officer (see fig. 4).<sup>93</sup> Although a hearing may proceed if the suspended student’s family is not present, the school district must explain the efforts made to secure the family’s attendance.<sup>94</sup> Prior to the hearing, a family may also plead no contest or work with the

90 *Id.* at 23–24.  
91 *Id.* at 25.  
92 *Id.* at 52.  
93 *Id.* at 39–45.  
94 *Id.* at 42 n.14.

school toward a more informal, earlier resolution, forestalling any formal hearing at all.<sup>95</sup>

FIGURE 4. SUPERINTENDENT'S SUSPENSION PROCESS



Both types of suspension may be appealed, and the regulations for both the original and appeals processes detail the required procedure, which can be protracted.<sup>96</sup> We do not yet know how the regulations are actually implemented. For example, how often do administrators skip some of the optional steps (e.g., by not talking with a student before issuing a Principal's Suspension)? How often do parents and families either fail to attend conferences and hearings or plead no contest and formally fail to contest a school's disciplinary decisions? Does ignorance about the process or the exigencies of administrators' jobs lead to shortcuts or other compromises with the formality of the suspension process?

#### IV. THE SUSPENSION DATA

To answer these questions, we studied the five years (2005–2010) of suspension data provided to us by the NYCDOE. Although our

<sup>95</sup> *Id.* at 38.

<sup>96</sup> *Id.* at 63–67.

analysis remains incomplete, the data reveal some intriguing correlations that invite further data-gathering and analysis.

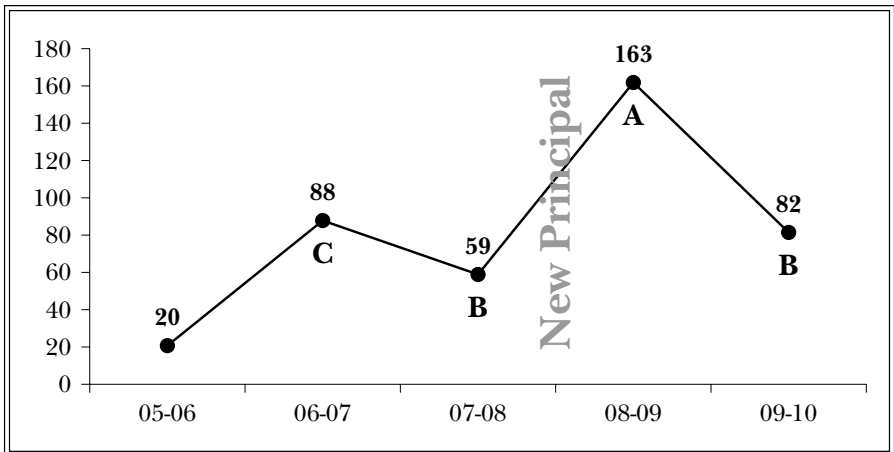
A. Schools

We analyzed suspensions reported at every school across the five-year period, examining enrollment counts at the school in order to compare not just the absolute number of suspensions but also the rate of suspensions as compared to the size of the student population. The data indicate that even given the general trend of increasing suspensions, the absolute number and proportions at individual schools often vary over the relevant time period, including some large fluctuations from year to year.

We identified approximately fifty schools that experienced such large fluctuations in suspensions. The data that we have assembled about these schools include the progress report grades that the NYCDOE awarded the schools and, for some years, whether the school’s principal changed. In the next research phase, we hope to gather more information about many of these schools, as well as about a subset of schools with more consistent suspension rates.

To illustrate potential patterns, we present a snapshot of four schools. Although the names are made up, the data are from actual schools in the NYC system. The first, called New Sheriff Middle School illustrates one typical suspension pattern. A new principal comes in and dramatically increases the number of suspensions while also strongly improving the school’s academic performance (as measured by the admittedly imperfect NYC Progress Reports). Once the students have adjusted to the new regime, the suspension level

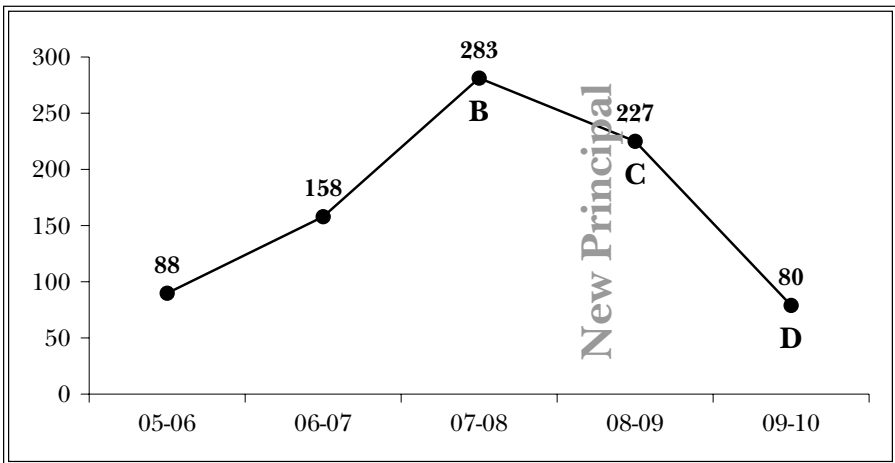
FIGURE 5. NEW SHERIFF MIDDLE SCHOOL



declines while academic performance remains relatively stable. More order in the classroom is presumably maintained, making suspensions less necessary.

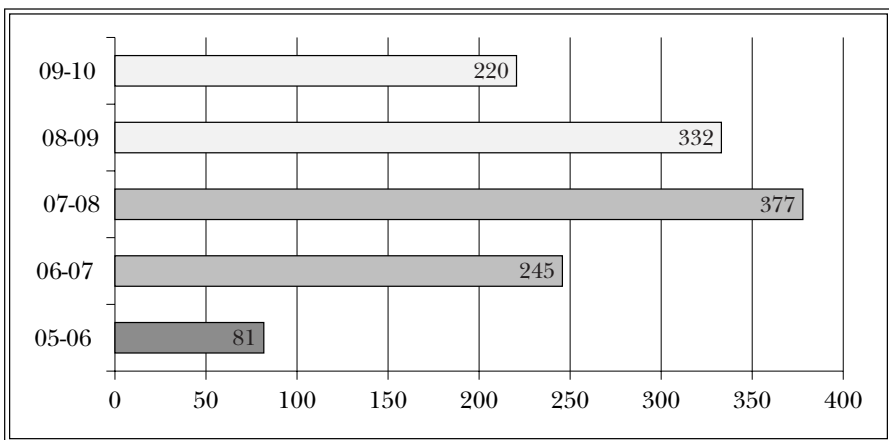
Our second school, Things Fall Apart High, reveals a different pattern. A new principal starts and the school then experiences a relatively flat but slightly lower suspension rate. Yet academic performance drops, first slowly and then more precipitously as the suspension rate plummets. The principal appears to be losing control of student misbehavior in the school, perhaps because of some change in personnel or other conditions there that produced a more lax attitude toward discipline.

FIGURE 6. THINGS FALL APART HIGH



A school like Long Road Middle tells an even more vexing story. At first, more suspensions seem to correlate with higher academic per-

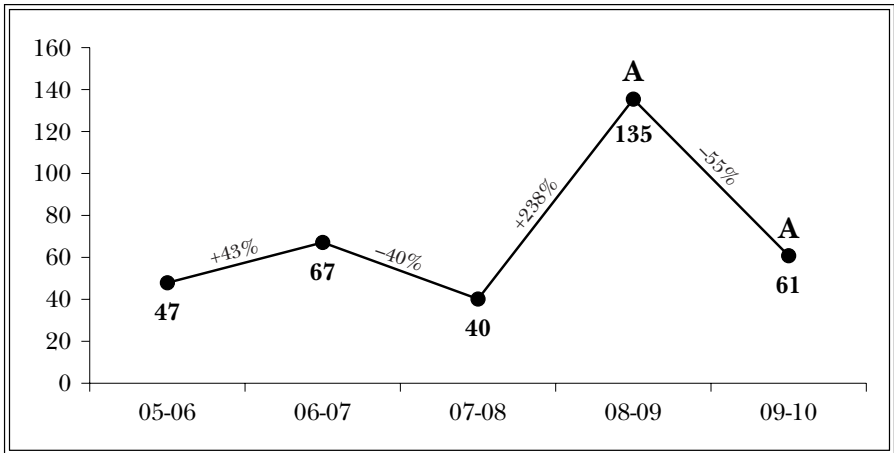
FIGURE 7. LONG ROAD MIDDLE SCHOOL



formance, but then the students’ grades start declining independent of the number of suspensions. Was the school too demanding, too lenient, or just inconsistent? Alternatively, did suspensions play only a small role in the school’s erratic academic performance over these five years?

Finally, there is a school like Hamlet High. This school appears to be consistently successful despite a highly varying number of suspended students each year.

FIGURE 8. HAMLET HIGH



In order to understand better what happened at these four schools—and to find trends at the school-system level—we hope to answer several questions about how these and other schools use suspensions. What caused large changes in suspension rates? How aligned are the school’s administration and its staff with respect to suspension policy? To what extent do the schools adhere to NYCDOE suspension policy? How do families respond to suspensions, and do they often contest the suspension by showing up at a hearing or appeal a decision afterward? Which academic and behavioral supports are available at these schools to help reduce the number of suspensions? Do some teachers remove students from class or request suspensions more often than others, and how do these patterns correlate with teacher effectiveness? Do principals and teachers perceive that suspension effectively helps struggling students change their behavior and their grades? Does students’ perception that a principal will suspend students acting as “bad apples” deter other students from misbehaving? Do demographically similar schools use suspension similarly?

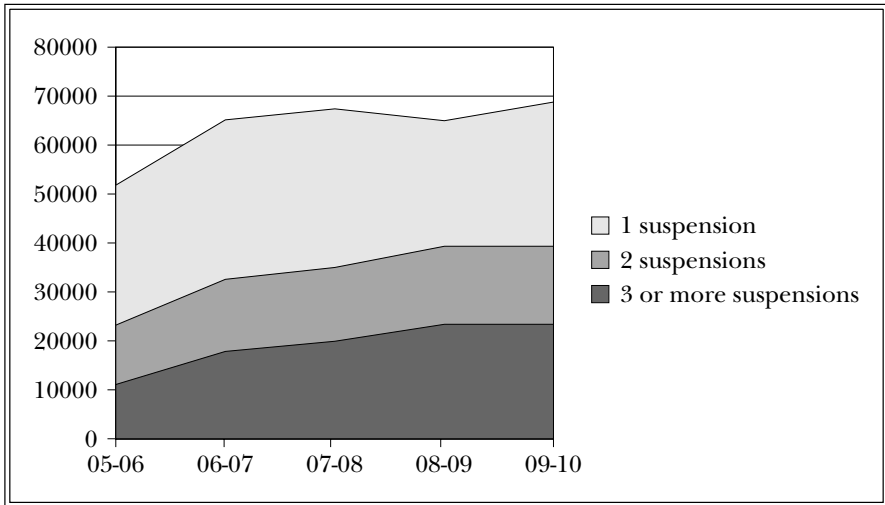
### B. *Students*

Our data reveal that many students receive two or more suspensions. In fact, the growth in suspensions over the past five years tracks a similarly-sized growth in the number of students suspended twice or more. This pattern raises a host of intriguing questions. Are the post-suspension interventions and supports for students adequate, and what would “adequacy” mean? Could a new type of post-suspension intervention arrest the trend of increasing suspensions? What degree and evidence of misbehavior would justify some sort of alternative placement—in an alternative school, perhaps—and how should officials determine which types of alternative placements are appropriate for which students?

Some students are suspended far more frequently in a single school year. More than 128 students were suspended ten or more times in one school year over the past five years; indeed, three of those students have been suspended ten or more times in *two different* school years. The number of students suspended ten or more times in a year trended upward every year until 2009–2010, when it dropped dramatically. Similarly, the population of students suspended three or more times numbers in the thousands each year, with a significant upward trend between 2005 and 2010, but with no similar decline in the final year for which we have data. Students with ten or more suspensions almost all score much lower than average on state examinations (and we suspect that some similar pattern is true of students with three or more suspensions). We do not know, but hope to investigate, whether there is a causal relationship here between discipline and academic performance, and which way the causal arrow points. Finally, almost none of the students suspended ten or more times seem to have switched schools during the school year; apparently, the same school keeps suspending the same student over and over.

It takes a great deal of a principal’s time and resources to suspend one student ten times in a school year—or ten students one time in a year. How much time and resources are consumed in these situations? Under what circumstances do principals think that it is worth it? Are some principals actually using these types of repeated suspensions as a type of de facto expulsion? Is there some sort of intensive support or alternate intervention that, if available for this small number of students (approximately thirty per year, on average) would generate large savings in time and resources while better preparing this group of very difficult students academically (or vocationally)?

FIGURE 9.



### C. Test Scores

Based on a preliminary analysis (table X) of test scores from grade three through nine, suspended students consistently score far below the average of all NYC students.

In addition, students suspended in one year also scored far below average in the previous year. For example, students who were suspended in the 2006–2007 school year on average had below-average test scores in 2005–2006 regardless of whether they were also suspended in 2005–2006. Several questions are worth exploring here, including:

—To what extent is low academic achievement causing students to get suspended (because of frustration, for example)? Would earlier academic intervention help to reduce the suspension rate?

—To what extent are suspensions (and the resulting missed work and reduced motivation) instead *causing* some of the low academic achievement? If so, would more intensive academic support for suspended students help to mitigate the academic damage caused by suspension?

—What role does effective teaching play in the frequency of suspension? As NYC considers releasing data about teachers’ value-added scores (relating to academic achievement) in response to requests from media outlets, can we find out whether, say, fourth graders in a classroom with high value-added teaching are suspended at a different rate than fourth graders across the hall in a classroom with low value-added teaching? Obtaining and using this information may necessitate system-level data, followed by school-level interviews.



There are some other important questions that the data we already have cannot definitively answer. For example, what is the post-suspension trajectory of these students? Do they drop out or transfer to different school systems at a higher rate? Do they later take GED courses? What is their high school (and college) graduation rate? Do they enter the labor market, the military, the criminal justice system, or colleges and technical schools? We would need more longitudinal data in order to answer these questions, though we will begin to explore the answers through our interviews with principals and teachers. Among the more policy-relevant questions is whether suspension is more effective system-wide than alternative, but less punitive, sanctions (e.g., detention, more parental involvement), and which roles are most effective in maintaining student discipline (e.g. teachers, principals, deans, parents, or some combination)?

## V. NEXT STEPS

Once we receive, analyze, and integrate the data for academic year 2010–2011 that has been requested from NYCDOE, we plan to conduct personal interviews with a subset of the principals in the system in order to explore some of the questions mentioned above that the data itself cannot answer, such as the school resources required to suspend a student, the perceived relationship between teacher quality and classroom disruptions and suspensions, the subsequent career of suspended students, possible improvements in the suspension system, and the like. To that end, we prepared a standardized interview protocol and in May of 2011 sent emails to a relatively small number of principals whose email addresses we were able to obtain, in which we requested interviews on-site or elsewhere, at their convenience (hopefully during the summer when they would have more time), and attached the interview protocol.<sup>97</sup> A small number replied and agreed to such interviews, but before we could actually schedule them, the NYCDOE institutional review board (“IRB”), which we had worked with for years, asked for a long list of information before renewing our approval. On June 29, 2011, we sent the IRB answers to all of these questions. As of mid-November, we are still awaiting the IRB’s response and thus cannot proceed with any of the interviewing.

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97 We hoped that the principals whom we interviewed might identify some teachers of suspended students in their schools, teachers whom we might then interview with a view to gaining an even more “on-the-ground” understanding of suspension practices and consequences.