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**Testimony of
DAVE PALMER
on behalf of
NEW YORK LAWYERS FOR THE PUBLIC INTEREST
before the
NEW YORK CITY COUNCIL COMMITTEE ON EDUCATION
Oversight Hearing on
MAYORAL CONTROL AND SCHOOL GOVERNANCE
March 3, 2008**

Good afternoon Chairperson Jackson and other members of the Education Committee. Thank you for the opportunity to provide testimony today. My name is Dave Palmer, and I am a staff attorney with New York Lawyers for the Public Interest (NYLPI). NYLPI is a nonprofit civil rights law firm formed in 1976 to address the unmet legal needs of New Yorkers. In 1991, NYLPI formed its Environmental Justice & Community Development Project to represent communities facing disproportionate environmental burdens. I represent community groups concerned about local schools on contaminated properties within New York City.

RECOMMENDATION: Call On The State Legislature To Address The Loophole In The NYC School Construction Authority's (SCA) Leasing Program Upon Revisiting Mayoral Control in 2009

I will keep my comments brief, as this issue of leasing contaminated facilities for use as schools without adequate oversight is a familiar one to this Committee. As you know, as part of its effort to reduce overcrowding in classrooms around the City, the SCA, in addition to creating seats through new construction, will also lease existing facilities to turn them into schools. Some of these leased facilities will almost certainly be sited on contaminated properties, as has happened in the past. Siting schools on contaminated properties is risky business; exposure to toxic chemicals can lead to behavioral problems, learning disabilities, decreased I.Q. for children, and has been linked to certain cancers.

To build a new school, state law requires the SCA to submit a site plan to the local community board, gives the City Council an opportunity to review the site plan, and requires environmental review¹, all of which give communities notice and an opportunity to participate. Unfortunately, the SCA administers its leasing program as if it is not subject to the same requirements as new construction.² Under the current scheme for

¹ Public Authorities Law §§ 1730-1733.

² The Appellate Division, in *Park South-Tenants Corp. v. Board of Education of the City of New York*, 208 A.D.2d 394 (1994), held that the School Construction Authority's (SCA) leasing program was not subject

leasing, even where there is known contamination, there may be insufficient environmental review of proposed lease sites and no opportunity for the community and Council to weigh-in.

This is no small problem. According to the most recent amendment to the Department of Education's (DOE) five-year capital plan, 31% of all new schools seats will be created through the SCA's leasing program. We believe communities should have a right to know of leased facilities proposed nearby, and that the Council should be able to weigh in on those siting decisions. This review is essential where a property is contaminated. Further, it is arbitrary and unjustified to have less stringent review for contaminated school sites simply because a school is leased instead of newly constructed on city-owned property. Certainly children and teachers have a right to a healthy school environment regardless of how a school property is acquired, and this can only be provided after a thorough environmental review. Failure to conduct sufficient environmental review, given the history of placing children on contaminated school properties without the most protective measures in place, is reckless.

State legislation is needed to amend the Public Authorities Law (PAL) to clarify expressly that leased facilities are subject to the same community participation and political and environmental review processes applied to new school construction. Last June, under the leadership of Chairperson Jackson and this Committee, the Council unanimously passed a resolution in support of state legislation to address this concern. That same month, the State Assembly passed a strong protective bill (A.8838, Nolan). Over 30 of New York City and New York State's top environmental justice groups, healthy schools advocates, and environmental organizations support that legislation.³ Unfortunately, the State Senate passed a much weaker bill that fails to address the central concerns (S.6393, Padavan) – largely because of intense Mayoral opposition to involving the City Council in toxic school siting decisions.

to the community participation and political approval processes codified in the Public Authorities Law (PAL). PAL § 1731. Upon information and belief, the SCA also interprets this decision as exempting their leasing program from environmental review requirements – a position with no basis in the law. Using this precedent to avoid accountability, the SCA places children at risk, because toxic chemicals pose a danger whether found in a leased facility or uncovered during new construction.

³ The following organizations support A.8838: Asian American Legal Defense and Education Fund (AALDEF) • Bronx Committee for Toxic Free Schools • Bronx Health REACH • Center for Health, Environment & Justice (CHEJ) • Chancellor's Parent Advisory Council • Chinese Progressive Association • Class Size Matters • Coalition for Asian American Children and Families • Community District Education Council 26 • Concerned Residents Organization • Environmental Advocates of New York • Environmental Defense • Healthy Schools Network • Hillcrest Citizens for Neighborhood Preservation • Hillcrest Estates Civic Association • Institute for Health and the Environment at SUNY Albany • Institute for Urban Family Health • Make the Road by Walking • Natural Resources Defense Council (NRDC) • New York City Environmental Justice Alliance (NYCEJA) • New York Immigration Coalition • New York Lawyers for the Public Interest (NYLPI) • New York League of Conservation Voters (NYLCV) • New York Public Interest Research Group (NYPIRG) • Northwest Bronx Community & Clergy Coalition • Nos Quedamos/We Stay • Puerto Rican Legal Defense and Education Fund (PRLDEF) • Sierra Club • Sustainable South Bronx • United Federation of Teachers (UFT) • United Puerto Rican Organization of Sunset Park (UPROSE) • WE ACT for Environmental Justice • Wellness in the Schools.

For a variety of reasons, Mayoral opposition to this bill has been almost single-handedly responsible for stopping this widely-supported legislation from passing the State Senate. **If the Senate fails to pass a strong bill to close the leasing loophole this state legislative session, we urge the City Council to call on the State Legislature to close the loophole when it revisits the issue of Mayoral Control in 2009.** NYLPI will be preparing a legal analysis – to be shared with this Committee – with specific suggestions for addressing the leasing issue via revisiting Mayoral Control.

Thank you for the opportunity to testify.