

Testimony of
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of
NEW YORK LAWYERS FOR THE PUBLIC INTEREST
before the
NEW YORK CITY COUNCIL COMMITTEE ON EDUCATION
Oversight Hearing on
**NEW YORK CITY COUNCIL FISCAL YEAR 2008 PRELIMINARY BUDGET,
MAYOR'S FISCAL YEAR 2007 PRELIMINARY MANAGEMENT REPORT**
March 12, 2007

Good Morning 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.

Loophole in the SCA's Leasing Program

As you know, new schools are springing up across New York City in order to alleviate overcrowding and to replace old facilities. As part of this effort, the New York City School Construction Authority (SCA), in addition to creating seats through new construction, will also lease existing facilities to turn them into schools. Given the limited space available, we are concerned that some of these leased facilities will be sited on contaminated properties – as has happened in the past. For example, in 2004, a contaminated factory was turned into a high school, the Soundview Educational Complex. This also happened at P.S. 65 in Ozone Park, Queens. Perhaps the most infamous example is P.S. 141 in Harlem, opened in 1997. After millions were spent on turning this leased dry cleaning plant into a school, the City was forced to close it down after it was found that students were being exposed to chemical fumes. This toxic exposure occurred despite a loud outcry from the community and Public Advocate's office that more testing was needed to ensure that the site was truly safe.

Siting schools on contaminated properties is risky business, as exposure to toxic chemicals can lead to behavioral problems, learning disabilities and decreased I.Q. for children. Our organization is concerned when new schools are constructed on contaminated land, but at least when new schools are constructed there is some semblance of a process for addressing community concerns. 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

¹ Public Authorities Law §§ 1730-1733.

of which give communities notice and an opportunity to participate. It was this process that enabled meaningful input from the community and the Council on the recent issues surrounding the contaminated Mott Haven Site – a process likely to result in a much safer schools site. Unfortunately, the SCA argues that its leasing program is not subject to the same requirements as new construction.² Under the current scheme for leasing, even where there is known contamination, there may be no environmental review of proposed lease sites and no opportunity for the community and Council to weigh-in.

The SCA, according to the Department of Education’s (DOE) five-year capital plan and the most recent February amendment, is planning to lease over 30 existing buildings across the City to turn them into schools. I am here today to highlight one simple point relevant to the Department of Education’s Capital Budget process: the few pages detailing proposed leased school sites, found deep within the 600 plus pages of the 5 year capital plan and its subsequent amendments, may be the only notice of plans to lease facilities for school purposes that the New York City Council (or any New Yorker) ever receives. For these 30 plus sites, there will likely be no site application submitted to the local community boards, nor to the City Council. And, while there may be some environmental review, it will likely not be sufficiently comparable to the requirements set forth in the State Environmental Quality Review Act, a law applicable to new school construction. It is anti-democratic to shut out local communities and the City Council from any school siting process. And, it makes no sense to do so simply because a school is leased instead of newly constructed. Finally, failure to conduct sufficient environmental review, given the history of placing children on contaminated school properties without providing for the proper testing and without all the necessary precautions in place, is reckless.

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. Certainly kids and teachers have a right to a healthy school environment, and this can only be provided after a thorough environmental review.

Closing the Loophole

- 1) Ultimately, 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

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 to the community participation and political approval processes codified in the Public Authorities Law (PAL). PAL § 1731. The SCA also interprets this decision as exempting their leasing program from environmental review requirements – a position with no basis in the law. *Park South* was a good policy-based decision that extinguished the racially-motivated efforts of a community group to keep a school out of their neighborhood. However, the court’s failure to conduct a thorough analysis of the statutory scheme inadvertently created bad precedent. 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.

school construction. New York City and State’s top environmental justice groups, healthy schools advocates, and environmental organizations support this change.³

- 2) The Council should pass a resolution in support of proposed state legislation to amend the PAL.
- 3) In the meantime, the Council should use its powers to press the SCA to follow the same rules for leased facilities as it does for new school construction.

In closing, to be clear, NYLPI fully supports efforts to provide new school seats, and we have no interest in stopping safe new capacity projects. But the City has an obligation to ensure that new seats are healthy seats, and the only way to ensure healthy seats is to mandate a healthy process with sufficient community notice, Council scrutiny, and thorough environmental review. A few lines in the Capital Budget cannot be considered an adequate substitute for the notice and opportunities for participation the siting process for new school construction requires.

Thank you for the opportunity to testify.

³ The following organizations support amending the Public Authorities Law to clarify expressly that leased facilities are subject to the same community participation and political and environmental review processes applied to new school construction: Bronx Committee for Toxic Free Schools, Bronx Health Reach, Center for Health, Environment & Justice (CHEJ), Chinese Progressive Association, Concerned Residents Organization, Environmental Advocates, Environmental Defense, Healthy Schools Network, Hillcrest Citizens for Neighborhood Preservation, Institute for Health and the Environment at SUNY Albany Institute for Urban Family Health, Make the Road by Walking, 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 – NYC, Sustainable South Bronx, and West Harlem Environmental Action, Inc. (WE ACT).