

*Testimony of*  
**Bronx Committee For Toxic Free Schools**  
**Bronx Health REACH**  
**Center for Health, Environment & Justice (CHEJ)**  
**Chinese Progressive Association**  
**Class Size Matters**  
**Concerned Residents Organization**  
**Environmental Advocates of New York**  
**Environmental Defense**  
**Healthy Schools Network**  
**Hillcrest Citizens for Neighborhood Preservation**  
**Institute for Health & the Environment, University at Albany, SUNY**  
**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**  
**Parents@PS65/Neighborhood Against TCE**  
**Puerto Rican Legal Defense and Education Fund (PRLDEF)**  
**Sierra Club**  
**Sustainable South Bronx**  
**West Harlem Environmental Action, Inc. (WE ACT)**

*before the*  
**NEW YORK CITY COUNCIL COMMITTEE ON EDUCATION**

*Hearing on*  
**RESOLUTION 836 – IN SUPPORT OF STATE LEGISLATION TO AMEND THE  
NYC SCHOOL CONSTRUCTION AUTHORITY’S LEASING PROGRAM**  
June 7, 2007

Good Afternoon Chairperson Jackson and 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. My organization represents the Concerned Residents Organization from the Soundview section of the Bronx. Our client will be testifying separately. With me is Kizzy Charles-Guzmán, Environmental Policy Coordinator for West Harlem Environmental Action (WE ACT). **We are testifying today on behalf of the 25 organizations listed above – which include some of the State and City’s leading environmental justice, healthy schools, children’s health and environmental organizations – all in favor of Resolution 836 calling on the State Legislature to**

**amend the Public Authorities Law to close a dangerous loophole in the New York City School Construction Authority's (SCA) leasing program.** For the hearing record, a list of individual signers can be found at the end of this testimony.

### **Loophole in the SCA's Leasing Program**

As this committee is well aware, 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 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 Campus. 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. When new schools are constructed on contaminated land there is 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 review<sup>1</sup> – all 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 siting of four new schools on the contaminated Mott Haven Site that many of the groups supporting this resolution were involved with. That process is likely to result in a much safer schools site, despite remaining concerns. Unfortunately, the SCA argues that its leasing program is not subject to the same requirements as new construction.<sup>2</sup> Under the current scheme for leasing, even where there is known contamination, there may be no environmental review of proposed leased sites and no opportunity for the community and Council to weigh-in.

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<sup>1</sup> Public Authorities Law §§ 1730-1733.

<sup>2</sup> 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 SCA's 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.

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. The few pages detailing proposed leased school sites, found deep within the 600 plus pages of the Department of Education's 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 – contamination issues could be present at both. Council involvement is absolutely essential to these decisions as it is an effective check on the Mayor and the School Construction Authority's school siting powers. As noted above, the Council has played a key role in ensuring stronger cleanups at contaminated school sites in the past. Further, 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.

### **Closing the Loophole**

We believe communities should have a right to know of leased facilities proposed nearby, and that the Council should have the ability to weigh in on those siting decisions. Students and teachers have a right to a healthy school environment, and this can only be provided after a thorough environmental review. Thus, state legislation is needed to amend 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. As noted, New York City and State's top environmental justice groups, healthy schools advocates, and environmental organizations support this change. Assembly Member Catherine T. Nolan, Chair of the Assembly's Education Committee, has submitted legislation in the Assembly (A.8838) to close this loophole. Senator Frank Padavan has agreed to sponsor legislation in the Senate.

We are here today to urge the Council to pass Resolution 836 in support of this proposed state legislation. We thank Chairperson Jackson for introducing this Resolution and we thank Public Advocate Betsy Gotbaum and the members of the City Council who are sponsoring it. In closing, our organizations support 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. **We urge you to pass Resolution 836 before the end of the state legislative session.**

Thank you for the opportunity to testify.

Chaira Salem & Jane Maisel  
**Bronx Committee for Toxic Free Schools**

Charmaine Ruddock  
**Bronx Health REACH**

Stacey Gonzalez & Anne Rabe  
**Center for Health, Environment & Justice  
(CHEJ)**

Mae Lee  
**Chinese Progressive Association**

Leonie Haimson  
**Class Size Matters**

Mary McKinney  
**Concerned Residents Organization**

Tim Sweeney  
**Environmental Advocates of New York**

Ramon Cruz  
**Environmental Defense**

Stephen Boese  
**Healthy Schools Network**

Bob Trabold  
**Hillcrest Citizens for Neighborhood  
Preservation**

David Carpenter, MD  
**Institute for Health & the Environment,  
University at Albany, SUNY**

Neil S. Calman, MD  
**Institute for Urban Family Health**

Andrew Friedman  
**Make the Road by Walking**

Elizabeth Yeampierre  
**New York City Environmental Justice  
Alliance (NYCEJA)**

José Davila  
**New York Immigration Coalition**

Dave Palmer  
**New York Lawyers for the Public Interest  
(NYLPI)**

Alison Hirsh  
**New York League of Conservation Voters  
(NYLCV)**

Laura Haight  
**New York Public Interest Research Group  
(NYPIRG)**

James Mumm  
**Northwest Bronx Community and Clergy  
Coalition (NWBCCC)**

Yolanda Gonzalez  
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Christina Iturralde  
**Puerto Rican Legal Defense and Education  
Fund (PRLDEF)**

Theresa Cassiack  
**Sierra Club**

Majora Carter  
**Sustainable South Bronx**

Kizzy Charles-Guzmán  
**WE ACT for Environmental Justice**