



Center for Family Representation (CFR)

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Presented Before

The New York City Council Committee on Education, jointly with the Committee on Public Safety

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Center for Family Representation (CFR) is grateful for the opportunity to submit testimony to the City Council Committees on Education and Public Safety. We thank Chairs Joseph and Hanks for holding this hearing addressing student safety in New York City Public Schools. We also thank Council Member Caban for introducing Res. 0473-2022, which supports State legislation that would ensure young people are protected during police interrogations.

Overview of CFR

CFR, founded in 2002, was the first indigent defense provider in New York City for parents who are facing Administration for Children's Services (ACS) prosecutions in Family Court Act (FCA) Article 10 proceedings. CFR represents parents in Queens, New York, and Bronx counties. Since our founding in 2002, we have represented about 12,000 parents with more than 23,000 children. In 2019, CFR started its Youth Defense Practice, which defends young people in Manhattan and Queens who are prosecuted in either criminal or family court.

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CFR employs an interdisciplinary model of representation, marrying in court litigation to out of court advocacy: every client is assigned an attorney and a social work staff member beginning at intake, which is generally the first day a client is summoned to court. These teams are supported by paralegals, supervisors, and parent advocates, who are parents who have direct experience being investigated and prosecuted by the family policing system.¹

To address collateral issues that often undermine family stability, CFR launched its Home for Good program in 2015 to expand its work to provide families with additional holistic assistance in immigration, housing and public benefits, as well as criminal matters. In 2019, CFR launched its Youth Defense Practice, with the goal of avoiding youth incarceration. CFR extended its interdisciplinary representation model to the Youth Defense Practice, working closely with families to ensure that they have supportive services from their communities and that legal and social work assistance also involves their parents. For example, parents may need assistance with housing or public benefits, immigration, or finding community-based services like family counseling. Students may need advocacy so that they aren't suspended from school because of an arrest. Our team strives to avoid prosecution altogether, though young clients may need legal representation during investigations or in court.

I. CFR does not Support Int. 0003-2022

A. Police Do Not Belong in Schools

CFR is encouraged that City Council continues to focus on the importance of students' safety, well-being, and trust in New York City's public schools (NYC Public Schools). Many of the young people and families we work with feel that their schools are under-resourced and that school staff are overwhelmed, particularly when faced with intervening in the complex mental health, emotional, and behavioral challenges of students. We see that Int. 0003-2022 continues efforts to limit the contact between the New York City Police Department (NYPD) and young people and the use of restraints, however we sincerely hope that the City Council agrees that more must be done to fully remove school safety agents and NYPD from New York City public schools.

Students experience emotional and behavioral crises because of trauma, mental illness or disability, and lack of other supports, services, or interventions. Students experiencing a mental health crisis should never be met with a law enforcement presence. City Council is well-aware that the police do

¹ CFR refers to the "child welfare" system as the "family policing" system to recognize that the system "is designed to regulate and punish Black and other marginalized people." Dorothy Roberts, Abolishing Policing also Means Abolishing Family Regulation, IMPRINT (June 16, 2020, 5:26 AM) [hereinafter Roberts, Abolishing], <https://imprintnews.org/child-welfare-2/abolishing-policing-also-means-abolishing-family-regulation/44480> [<https://perma.cc/3VAJ-H8WP>].d

not safely and effectively de-escalate adults experiencing emotional or behavioral crises in the community - they are even less well equipped to de-escalate children experiencing emotional or behavioral crises.²

NYC Public Schools have long known that their practice of involving school safety officers and the NYPD to resolve students' emotional crises is ineffective and applied disproportionately to Black students.³ NYC Public Schools has had years to curb their reliance on school safety and NYPD as responders to students' emotional crises. It is alarming that since the 2014 court settlement of *T.H. et al. v. Fariña, et al.* (13 Civ. 8777), NYC Public Schools have continued to call 911 on students in emotional crisis just as frequently as they had before.⁴ Nothing has changed.

School safety officers and precinct-based NYPD lack the necessary training in de-escalation to appropriately help when students are experiencing emotional or behavioral crises. We are *not* asking for more training or more investment in the NYPD to address student behavior. Traumatic experiences with the police at school can lead to student disconnection from school and increase school absences.⁵ With investment in mental health resources instead of the police, students who experience emotional crises can emerge from those experiences without further trauma of contact with the criminal legal system.

B. New York City Public School Students and Staff Need More Support

As a legal provider that represents children who have been arrested, we have seen again and again how traumatic any contact with the police is for the children and families that we serve. We believe that there is no role for the school safety officers or the NYPD in New York City public schools, but we also acknowledge that there are not enough alternative resources to serve students experiencing emotional or behavioral crises in school.

We agree with the language of Intro. 0003-2022 that non-law enforcement school staff should be assessing what level of intervention is necessary to keep students and staff safe, however, we know from the experiences of the families that we work with that qualified clinical staff are often not available or accessible to every school community if and when they are needed to make these determinations.⁶

CFR recently worked with a sixteen year old in high school struggling with addiction. During one school day, he was found with a vape pen, and the pen was confiscated. Our client had a strong emotional response, and wouldn't leave the school, and the school called 911. When police arrived, they were unable to de-escalate, and they handcuffed him and brought him to the precinct. This is a

² Kramer, Abigail, "NYC Schools Handcuff and Haul Away Kids in Emotional Crisis" ProPublica and THE CITY, , May 4, 2023, 5:00am, <https://www.propublica.org/article/nyc-schools-students-police-emotional-crisis-nypd>.

³ *Id.*

⁴ *Id.*

⁵ Advocates for Children, Police Response to Students in Emotional Crisis, June 2021, https://www.advocatesforchildren.org/sites/default/files/library/police_response_students_in_crisis.pdf?pt=1.

⁶ New York State Comptroller, "Audit of Mental Health Education, Supports, and Services in Schools, New York City Department of Education" August, 2022, <https://www.osc.state.ny.us/files/state-agencies/audits/pdf/sga-2022-20n7.pdf>.

student with an Individualized Education Plan who needs additional support and yet the remedy for that day was to have the NYPD handcuff him and remove him from his school community.

Our client's experiences would be different if the emotional crises they experienced were addressed by trained mental health professionals. We ask that NYC Public Schools hire mental health professionals to work within school communities consistently, so that if students do experience emotional crises, intervention happens by a familiar adult who could appropriately de-escalate situations in the moment without police involvement. Critically, these staff could then work with school communities after these incidents to restore and repair trust and comfort within student and staff populations. Evidence-based de-escalation appropriate for the particular circumstances of the student involved are the only way to minimize harm, both to that particular student and to the larger school community.

City Council must take action to combat the structural racism of the school-to-prison pipeline and ensure that schools have the resources to serve the students who are most in need. Parents and students need to be able to trust that their school communities are well-equipped to work with even the most vulnerable students safely without ensnaring them in the criminal legal system. CFR urges City Council to continue its efforts to make New York City public schools safe without criminalizing the conduct of children.

II. CFR Supports Res. 473

Under current New York law:

- Police are allowed to interrogate a child without a parent or guardian present.
- Police can lie to a youth in order to induce that youth to waive their right to remain silent.
- Police are not required to allow a child to meet and talk with their parent or guardian before the police read the child their Miranda rights.
- Police are not required to explain to the child and the child's parent or guardian what it is the police want to question the youth about.
- Police do not tell the child, parent and/or guardian that the child can stop answering questions any time the child chooses.
- Even if present, a parent or guardian may be unable to protect their child's right to remain silent because they do not understand the right either, the stress of their child's situation renders them unable to think clearly, or they have conflicting interests.

90% of youth waive their Miranda rights. Thirty years of research by psychologists, sociologists, and neurologists make it clear that even under controlled circumstances, children lack the capacity to fully appreciate the meaning and significance of the right to remain silent, and to appreciate the almost certain repercussions of waiving that right. Add to that the stress and tension inherent in a custodial interrogation, and the prospect of an intelligent and voluntary waiver of the right to remain silent becomes a myth.

Research also demonstrates that the young people most likely to come into contact with law enforcement are those with the most limited capacity to understand their rights.

While false confessions are just the tip of the iceberg when it comes to Miranda waivers, these are the same children who are most likely to say whatever they think will most immediately relieve them from the stress and pressure they are exposed to when being interrogated. The Exonerated Five highlighted in “When They See Us” were not an isolated case, but rather an example of what happens all too often. Empirical research also tells us that children are significantly more likely than adults to falsely confess to a crime, and that the presence of a parent or guardian does not result in fewer waivers of Miranda rights.

We know that the children most likely to come into contact with law enforcement and the juvenile legal system are African-American and Latinx children from over-surveilled schools and communities. The result is a disproportionate number of Black and Latinx children interrogated by police without an attorney to help them decide whether to waive Miranda rights while their more affluent peers are protected by hired attorneys. For Black and Latinx children from low income communities, the protections of Miranda are illusory.

S.1099 / A.1963 would provide the needed protection. When police determine that interrogation of a child is necessary, this bill would require that a youth first consult with counsel before any questioning can take place. Consultation with counsel would be a non-waivable requirement that would exclude any statement taken in violation of the rule from being entered into evidence against the young person.

We call on the New York State Legislature to pass this critical piece of legislation to ensure that children’s Miranda rights are protected and minimize the risk of harm arising from false confessions.

We are grateful for the invaluable opportunity to share our thoughts about these important issues and look forward to being a part of this ongoing conversation. If you have any questions, please do not hesitate to reach out to CFR’s Director of Litigation for its Youth Defense Practice, Sandeep Kandhari, at skandhari@cfny.org or (646) 300-1058.