



**Testimony**  
**Of**  
**Philip K. Howard, Chair of Common Good**  
**Before**  
**The Education Committee of the New York City Council**  
**February 8, 2005**

It's a pleasure to be here today and to have a chance to talk with you about the current student disciplinary process and the extent to which it enhances or undermines the learning environment. I'm Philip Howard, Chair of Common Good, the bi-partisan legal reform coalition. Our work focuses on the impact that fear of litigation has on American institutions, including our public schools, and what can be done to reduce that fear.

Late last year, Common Good released a study entitled "Over Ruled: The Burden of Law on America's Public Schools." The study – which is available online at [www.cgood.org](http://www.cgood.org) – collected all of the laws and regulations governing a typical public high school in New York City. It revealed the extraordinary over-legalization of public schools that has taken place in New York.

In all, the study found that more than 60 separate sources of laws and regulations, with thousands of discrete legal obligations, currently apply to public high schools in New York City.

Did you know, for instance, that the simple act of conducting an athletic event can require up to 99 steps and legal considerations governing everything from who can coach to the size of the ear flaps on the batter's helmet to the availability of automated external defibrillators?

Did you know that replacing a heating system can involve up to 99 steps and legal considerations which can take months to complete – or that filling a teacher vacancy can require up to 38 steps and legal considerations that can take months and months to fulfill?

The laws and regulations are so excessive that:

- The New York State Education Law is 846 pages long;
- 720 pages of regulations have been issued by the New York State Commissioner of Education;

- 15,062 decisions – contained in 43 volumes – have been made by the New York State Commissioner of Education in response to appeals of decisions made by education professionals;
- The New York City teachers’ contract is 204 pages long, with an additional 105-page memorandum of understanding;
- The No Child Left Behind Act is another 690 pages long, and
- More than 200 pages of regulations (not including case law) control the discipline of students.

And that’s just the beginning.

The study found that the act of suspending a disruptive student can involve up to 66 steps and legal considerations, which can take 105 days to complete. No wonder student discipline is a problem. How is a teacher or a principal meant to have control of a classroom or school if the process of disciplining a student is so daunting?

In an effort to protect the individual student from inappropriate discipline, the law has added so many steps that it no longer protects the students who want to learn. What about their rights? And what about the needs of the society as a whole that depends upon educated students to function effectively?

The current student disciplinary process is so lengthy and arduous that administrators are discouraged from invoking it. As a result, its effect is the opposite of what was intended. It actually protects unruly students from discipline – providing them with a weapon to ensure that they are not reprimanded.

In addition, each of the steps and legal considerations that make up the process represents a potential lawsuit. The process itself is a series of obstacles seemingly designed more to trip up the administrator than to ensure a proper learning environment.

And human beings have cognitive limits. If teachers and principals are forced to spend their time working through these arduous procedures, how will they have the energy, enthusiasm, and time to educate?

The truth is that law is brilliantly ill-suited as a management system. It is rigid and leaves no room to adjust for the circumstances.

Law certainly has a noble pedigree in setting educational goals, as happened dramatically 50 years ago with desegregation. But using legal dictates to specify how to achieve those goals has the opposite effect. It basically kills the human instinct and judgment needed to run a school.

A recent national report by Public Agenda, the nonprofit public opinion research organization, describes a principal who had no choice but to suspend a six-year-old girl who, when asked by the teacher to bring in her favorite possession, brought in a small penknife given to her by her grandfather. “Zero tolerance” rules prohibit any weapon, no matter that it was an innocent

mistake by a first grader. No exceptions allowed. A rule is a rule: ban that child from classes for a week.

Once the idea of rule-based management takes root, the bureaucracy grows like kudzu. Teachers and principals are tied up in legal knots, with little room to maneuver, or even to do their jobs. One principal weighed the legal dictates he received one year from the superintendent's office at over 45 pounds. In Alabama recently, 2000 teachers filed grievances against all the paperwork, saying they couldn't both fill out all the forms and focus on teaching their students.

A legalistic culture becomes poisonous, transforming what should be a cooperative enterprise into a viper's nest of competing entitlements, as people start parsing the rules to get their way. What matters, students quickly learn, is not right and wrong, but what you can argue. The principal's authority disappears under all these legal demands — by teachers, custodians, any student or parent who thinks they could have been treated better.

Like tired prizefighters staggering through the late rounds, each interest group pummels the other with legal requirements without apparent awareness that the fight guarantees a knockout — a TKO of America's schools.

Instead of prolonging this mutual destruction, perhaps it's time to rethink basic assumptions. Is legal micromanagement the right way to run schools? Maybe teachers and principals should be liberated to think for themselves. That's how successful schools have worked since the dawn of education, and how parochial and private schools work today.

The sticking point is distrust. It's human nature to fear the worst, especially when things aren't going well. No one in education seems to trust anyone else. So they cling to these legal entitlements even as the darkness of failure descends around them.

But breaking free from this legal nightmare doesn't require blind trust, or some authoritarian structure. Guarding against incompetence or unfairness can be accomplished far more effectively with human oversight than with legal central planning. Give someone else the authority to act as a check and balance. That's how Congress and the President handle each other. If we don't trust the principals to be fair, then set up a parent-teacher committee with authority to review disciplinary and employment decisions. Parents and teachers know what's going on, and who's good and who's not.

Schools are human institutions, and uniquely depend on the energy, skill, judgment, humor and sympathy of individual teachers and principals. Liberate them to draw on all their human traits.

Then liberate some of us to hold them accountable. Bulldoze most of the rules. Ban lawyers (except in situations where permitted elsewhere in society). Put law back on its high throne, defining goals and basic principles.

America's schools require, not new reforms, but an organizational revolution to undo many reforms. Individual humans, not a legal labyrinth, hold the key to educating our children.