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## Limited Access Letters: How New York City Schools Illegally Ban “Unruly” Parents of Color and Parents of Students with Disabilities

Andrew Gerst

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## Limited Access Letters: How New York City Schools Illegally Ban “Unruly” Parents of Color and Parents of Students with Disabilities

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# LIMITED ACCESS LETTERS: HOW NEW YORK CITY SCHOOLS ILLEGALLY BAN “UNRULY” PARENTS OF COLOR AND PARENTS OF STUDENTS WITH DISABILITIES

*Andrew Gerst*<sup>†</sup>

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#### INTRODUCTION: “WHITE PARENTS DON’T KNOW”

“It’s a damn shame the school made these kids stand in the pouring rain,” Latasha Battle said.<sup>1</sup>

Battle stood in a downpour with other parents and students outside Success Academy (“Success”) of Cobble Hill before the school opened its doors.<sup>2</sup> It was a little before 7:35 A.M. one morning in the spring of 2017.<sup>3</sup>

The word “damn” caused problems.<sup>4</sup> A few hours later, Success Academy’s principal, Brittany Davis-Roberti, banned Battle from the school grounds.<sup>5</sup> The ban came in the form of a letter from Principal Davis-Roberti.<sup>6</sup> In order to ever set foot on the campus again, the principal

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<sup>1</sup> Ben Chapman & Greg B. Smith, *Mom Banned from Brooklyn Success Academy Charter School Until She Says Sorry to Principal for Saying ‘Damn’ Near Kids*, N.Y. DAILY NEWS (June 14, 2017, 4:00 AM), <https://perma.cc/FDE7-HXY3>.

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> Aaron Holmes et al., *Mom Banished from Brooklyn Success Academy for Cursing Refuses to Say Sorry – and Pulls Her Kids Out of Charter School*, N.Y. DAILY NEWS (June 14, 2017, 5:25 PM), <https://perma.cc/5N5Q-JD9N>. The school, which is a charter school and part of the larger Success Academy network, claims that Battle also used the word “fuck” and that she screamed rather than speaking. *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

required Battle to “schedule an appointment . . . to apologize for [her] behavior.”<sup>7</sup> Principal Davis-Roberti also required Battle to “pledge that it [would] never happen again.”<sup>8</sup>

After the *New York Daily News* wrote about the incident, Success defended Principal Davis-Roberti’s decision: “When an adult frightens children and staff by screaming profanities, we absolutely support our principals in taking necessary steps to ensure a respectful, safe school environment,” a Success spokesperson said.<sup>9</sup> Battle has said she won’t apologize, and she has pulled her children from Success.<sup>10</sup> “I’m leaving. I’m taking my children and I’m never coming back,” she said. “At 8:15 a.m. it’s graduation and then I’m out of here. It’s ridiculous.”<sup>11</sup>

In Connecticut, meanwhile, Norman Johnson—the father of Janai, a high school student—had a dispute with his daughter’s principal over the basketball team.<sup>12</sup> The two had a meeting, and words were exchanged.<sup>13</sup> A few days later, Johnson received the following email:

This letter is to inform you that as of February 10, 2013, you are tres[pa]ssed from the Capital Preparatory Magnet School and its events, (including but not limited to sports both on and off campus), with the exception of commencement exercises on May 21, 2013; after which the trespass will be reinstated. Disregarding this correspondence by coming to school grounds or to an event in which Capital Prep is a participant, will result in your immediate removal.

Your verbal altercations, physical intimidation and direct threats to staff have created an unsafe environment for staff, students and other parents and will no longer be tolerated.

A copy of this letter is being sent to the Hartford Board of Education and the Hartford Police Department as well as other communities and venues where the Capital Preparatory Magnet School’s activities may occur.<sup>14</sup>

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<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> Chapman & Smith, *supra* note 1.

<sup>10</sup> Holmes et al., *supra* note 4.

<sup>11</sup> *Id.*

<sup>12</sup> Johnson v. Perry, 859 F.3d 156, 161-64 (2d Cir. 2017); Vanessa De La Torre & Matthew Kauffman, *Acclaimed Capital Prep Magnet School Bypassed Normal Lottery Process for Athletes, Other Students*, HARTFORD COURANT (May 3, 2017, 6:00 AM), <https://perma.cc/8ZM8-SVWZ>.

<sup>13</sup> Johnson v. Perry, 140 F. Supp. 3d 222, 225 (D. Conn. 2015), *aff’d in part, rev’d in part, dismissed in part*, 859 F.3d 156 (2d Cir. 2017).

<sup>14</sup> Johnson, 859 F.3d at 163 (emphasis omitted).

More than eighty percent of the students at the school—known as a high-performing<sup>15</sup> school for low-income families in Hartford, Connecticut—are identified as Black or Latinx.<sup>16</sup>

\* \* \*

What Principal Perry gave Johnson—and what Principal Brittany Davis-Roberti of Success gave Latasha Battle—is known in the New York City Department of Education (DOE) as a “limited access” letter.<sup>17</sup> And in New York City, home to the largest school system in the country (which covers all five boroughs),<sup>18</sup> “unruly” parents of children receive these letters.

These limited access letters allow a principal to ban a parent from school grounds, apply modified security protocols, or strictly enforce already-existent security policies. Officially, a principal is only supposed to issue these letters after an incident at the school that was serious enough to require that a School Safety Agent (SSA) be involved.<sup>19</sup> In practice, however, principals have apparently given these letters even for less serious incidents that do not involve SSAs.<sup>20</sup>

The content of limited access letters varies. Some have modified procedures for student pick-up and drop-off.<sup>21</sup> Other letters include modified security procedures, such as schools stating that parents cannot pass a

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<sup>15</sup> See Marwa Eltagouri, *Hartford's Capital Prep Graduates 32*, HARTFORD COURANT (June 7, 2013), <https://perma.cc/8DFP-ZK59> (“Capital Prep, which claims it sends 100 percent of its graduates to a four-year college, met that goal again, an accomplishment the school’s founder and principal, Steve Perry, calls ‘not what you’d expect of Hartford children.’”).

<sup>16</sup> *Principal's Tough Love, High Expectations Get Kids into College*, CNN (July 22, 2009, 1:28 PM), <https://perma.cc/QTY7-BWDN>.

<sup>17</sup> See Amy Zimmer, ‘Limited Access Letters’ Used Unfairly to Ban Parents from Schools: Critics, DNAINFO (Sept. 9, 2016, 7:23 AM), <https://perma.cc/7CBL-2KML>.

<sup>18</sup> NAT’L CTR. FOR EDUC. STAT., CHARACTERISTICS OF THE 100 LARGEST PUBLIC ELEMENTARY AND SECONDARY DISTRICTS IN THE UNITED STATES: 2000-2001 app. a, <https://perma.cc/24MN-V6MG> (last visited Apr. 24, 2019); Christina Veiga, *The Country’s Largest School System – and One of the Most Segregated – Just Released Its ‘School Diversity’ Plan. Here Are the Highlights*, CHALKBEAT (June 6, 2017), <https://perma.cc/V2GP-JUPM>.

<sup>19</sup> Zimmer, *supra* note 17. Importantly, “[l]imited access letters,’ which an Education Department staffer advised should only be used in case of a ‘serious incident at the school that required the involvement of School Safety Agents,’ have been given out without any apparent oversight or supervision to parents across the city . . .” *Id.*

<sup>20</sup> Based on the author’s experience. In discussing this issue with other MFJ attorneys, it is apparent that principals may issue these letters for a variety of reasons.

<sup>21</sup> Based on the author’s experience. For instance, some letters may require a parent to give notice to a principal in advance if the parent intends to pick up her, his, or their child from school.

school's security desk.<sup>22</sup> The text of a typical letter prevents a child's parent from meeting with any of the child's teachers without a principal's approval. For example, a letter may say something like: "You [the parent] are required to call me [the principal] before scheduling a meeting with your child's teacher." But some parents say SSAs and other school staff may incorrectly interpret this type of letter and refuse to let a parent on campus, even if a parent already has called the principal to schedule a meeting with a teacher.<sup>23</sup>

The reality of which parents receive the letters (and which do not) suggests that they are another tool of discrimination and oppression. Although no formal data exist on limited access letters, the limited anecdotal evidence available strongly suggests that nearly all the banned parents who have received these letters are Black or Latinx.<sup>24</sup> The DOE does not keep track of the race of the parent receiving the letter, the race of the principal giving the letter, or anything else related to the limited access letter practice.<sup>25</sup> But those intimately familiar with the letters know who the letters target; as Stephanie Thompson, a twenty-five-year-old Black mother in New York City, put it in a recent article: "[w]hite parents don't know about [these] letters."<sup>26</sup> Furthermore, some of these banned parents have children with disabilities, which is unsurprising given the overrepresentation of Black students and other students of color in special education.<sup>27</sup>

Black students—rather than parents—have received most of the attention in discussions of the school-to-prison pipeline. Black students have also faced disproportionate amounts of school discipline throughout the country. These rates, according to an April 2018 federal report, are only worsening.<sup>28</sup> In 2013-2014, for instance, Black students constituted

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<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> For a discussion of how limited access letters are used "to unfairly silence outspoken parents in low-income Black and Hispanic schools," see Zimmer, *supra* note 17.

<sup>25</sup> See *id.* ("In response to a Freedom of Information Law request seeking data on the letters, the DOE's FOIL request officer was unable to provide any information, stating[] that 'diligent searches and inquiries for data in response to your request have been conducted. I am informed, however, that responsive data is not tracked or compiled in a computer storage system, as the letters in question are maintained by individual schools.'").

<sup>26</sup> *Id.*

<sup>27</sup> See, e.g., Int'l Socialist Org., *Don't Let an Abusive Principal Ban Parents*, SOCIALIST WORKER (May 1, 2017), <https://perma.cc/34G9-XNKQ> (discussing two parents of children with disabilities who received limited access letters and describing the "heartbreaking" effect of limited access letters on the two children); Kelly Kreskow, *Overrepresentation of Minorities in Special Education* (Apr. 2013) (unpublished M.S. in Literacy Education thesis, St. John Fisher College), <https://perma.cc/3WHP-L3YL>.

<sup>28</sup> Moriah Balingit, *Racial Disparities in School Discipline Are Growing, Federal Data Show*, WASH. POST (Apr. 24, 2018), <https://perma.cc/FW8J-TMHM>.

sixteen percent of the nation's students but accounted for twenty-seven percent of all arrests at schools.<sup>29</sup> Two years later, in 2015-2016, Black students constituted fifteen percent of the nation's students—a smaller percentage—but accounted for thirty-one percent of all arrests at schools.<sup>30</sup> Race-conscious policies on school discipline were introduced by the Obama administration—and then later rescinded by Trump—but they focused on disciplining students, not parents.<sup>31</sup>

Parents of children with disabilities, regardless of race, may be more likely to receive limited access letters than parents of children without disabilities. Students with disabilities in New York already receive a disproportionate amount of student discipline. In 2017-2018, students with disabilities comprised approximately twenty percent of students in New York City and roughly forty percent of suspensions.<sup>32</sup> Nationally, the trends are similar: students with disabilities receive school suspensions at approximately twice the rate of non-disabled peers.<sup>33</sup> This link is hardly shocking; “[s]o intertwined are these oppressions that any attempt to rid the nation of racism without doing away with ableism yields practically nothing.”<sup>34</sup>

New York State has also tracked similar discipline data for students of color, but not for parents.<sup>35</sup> New York City, too, tracks data on student

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<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> Collin Binkley, *Trump Officials Cancel Obama-Era Policy on School Discipline*, AP NEWS (Dec. 21, 2018), <https://perma.cc/4MUW-VMYE>. In 2014, then-President Barack Obama implemented race-conscious policies on school discipline to emphasize restorative justice and other measures to counteract racial disparities. *Id.* In 2018, President Donald Trump rescinded these policies. *Id.* Autonomy was the word: “Our decision to rescind that guidance today makes it clear that discipline is a matter on which classroom teachers and local school leaders deserve and need autonomy,” said Education Secretary Betsy DeVos at the time. *Id.*

<sup>32</sup> Alex Zimmerman, *Suspensions in New York City Rise for the First Time Since de Blasio Took Office*, CHALKBEAT (Oct. 31, 2018), <https://perma.cc/TYA2-6XFQ>.

<sup>33</sup> Courtney Perkes, *Report: Students with Disabilities Disciplined Twice as Often as Peers*, DISABILITY SCOOP (Feb. 28, 2018), <https://perma.cc/N84C-PCV7>.

<sup>34</sup> Talila A. Lewis, *Emmett Till & the Pervasive Erasure of Disability in Conversations about White Supremacy & Police Violence*, TALILAALEWIS.COM (Jan. 28, 2017), <https://perma.cc/XV65-XN2M>.

<sup>35</sup> In December 2018, the New York Equity Coalition released a major report addressing school suspensions in New York called “Stolen Time.” THE N.Y. EQUITY COALITION, *STOLEN TIME: NEW YORK STATE’S SUSPENSION CRISIS* (2018), <https://perma.cc/XHV6-4E2Y>. This report provides critical data on race and school suspensions. For example, we know that, statewide, Black students comprise 15% of all students, but 33% of all students who have been suspended at least once. *Id.* at 11. We know that outside of New York City, only 2.7% of white students have received at least one out-of-school suspension, and that for Black students in the same region, the percentage is 11.4%. *Id.* at 4. We also have details about specific school districts. For instance, the data show that in Buffalo, New York, Black students are more than



suspension, but not parental exclusion from campus.<sup>36</sup> The DOE collects and publishes disaggregated data of every suspension and other removals from class by race and more.<sup>37</sup>

The data on student suspensions are robust, detailed, and granular. They speak powerfully to the racial dimensions of “no excuses” discipline policies and the disproportionate effects on students of color. But the data on parental exclusions is nil. The DOE does not keep track of the race of the parent receiving the letter, the race of the principal giving the letter, or anything else related to the limited access letter practice.<sup>38</sup>

Why do these letters matter? Because limited access letters are part of the school discipline system and likely result in the systematic exclusion of parents of color. The same impetus leads a principal to ban an “unruly” parent as the one that leads a teacher to suspend a “disruptive” student. Implicit or explicit bias in these contexts will lead a figure of authority to make the kind of snap decision that punishes people of color, whether parent or child. This discipline protocol includes school safety officers and principals, who have the authority to arrest and suspend students and refer them—and their parents—to the police. As such, these letters are one more way in which “our schools are functioning as carceral spaces.”<sup>39</sup>

The letters are a form of punishment for parents, but also their children. The parent who cannot watch his daughter play basketball or graduate cannot celebrate the joy of her education. The student whose father

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twice as likely to be suspended as white students. *Id.* at 9. And in Long Island, Black students are about five times more likely to be suspended than white students. THE N.Y. EQUITY COALITION, *STOLEN TIME: NEW YORK STATE’S SUSPENSION CRISIS: LONG ISLAND* (2018), <https://perma.cc/B9XV-HVEZ>.

<sup>36</sup> Alex Zimmerman, *Black Students in New York City Receive Harsher Suspensions for the Same Infractions, Report Finds*, CHALKBEAT (Oct. 11, 2018), <https://perma.cc/BZD9-ATTQ>. New York City’s Independent Budget Office (IBO) released a report in October 2018 breaking down the average length of suspensions by the ten most frequent infractions and by race. *Id.* The report found that “overall suspensions still disproportionately affect black students and students with disabilities.” *Id.* For instance, white students who were suspended for “reckless behavior” during the 2016-2017 school year received an average suspension of 10.9 days, whereas Black students, by contrast, received an average suspension of 16.7 days—more than an entire week of extra suspension time. *Id.* For the IBO’s report, see N.Y.C. INDEP. BUDGET OFF., *WHEN STUDENTS OF DIFFERENT ETHNICITIES ARE SUSPENDED FOR THE SAME INFRACTION IS THE AVERAGE LENGTH OF THEIR SUSPENSION THE SAME?* (2018), <https://perma.cc/BNU2-EB72>.

<sup>37</sup> NYC DEP’T OF EDUC. INFOHUB, *SUSPENSION REPORTS*, <https://perma.cc/VX9L-YMH7> (last visited May 9, 2019). These data are also available on OpenData. *See, e.g.*, NYC OPENDATA, *2016-2017 STUDENT DISCIPLINE ANNUAL REPORT – RACE* (updated Sept. 10, 2018), <https://perma.cc/J69R-LV7J> (aggregating school disciplinary contacts by race).

<sup>38</sup> *See* Zimmer, *supra* note 17.

<sup>39</sup> Dustin P. Gibson, *Speech at the 2019 Am. Ass’n of People with Disabilities Leadership Awards Gala* (Mar. 13, 2019), <https://perma.cc/V695-6GRK>.

may not attend graduation, in turn, cannot feel part of a family fully welcome at the school. The child who does not feel part of a welcome family at school may choose to stop going. And once a student has dropped out of high school, or not gone to college, or otherwise failed to overcome the systemic barriers she faces, the rest, as they say, is history.

\* \* \*

The power in these letters is not just in what they mean for parents receiving them—it is also in their secrecy. No DOE Chancellor’s Regulations directly address the practice. The NYC Parents’ Bill of Rights does not discuss the practice.<sup>40</sup> Nor do any state laws apparently recognize the relevant rights of a parent.<sup>41</sup> Despite what is almost certainly a racially discriminatory disparate impact, an utter lack of any form of due process, and a violation of the “arbitrary and capricious” standard, the DOE has not given any inkling that it will curtail or eliminate the practice. But parents do have ways to fight back.

Sometimes the harm these letters impose on parents is substantial—such as when a school forbids a parent from attending a child’s capstone project, as Principal Perry did for Norman Johnson,<sup>42</sup> or participating in graduation. This type of letter prevents a parent from engaging in critical moments of their child’s education. Sometimes the harm may seem less substantial—such as when a school merely reaffirms strict compliance with security protocol already in place. But even if the harm caused by the letters seems minimal, this article argues that the disapprobation and shame that accompanies receipt of the letters poses a serious threat to students and their families.

I hope that the article will motivate New York elected officials to modify or abolish the limited access letter procedure altogether. Of course, all students, teachers, and school staff need a safe, orderly place to learn and work. But what does that look like, and for whom?

Limited access letters should be abolished permanently. They are unnecessary: principals that truly have reason to bar a dangerous parent can seek recourse through a restraining order. The letters can have a financial impact: parents excluded from a campus may need to disrupt their work schedule, if not an entire day, to restructure child drop-off and pick-up

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<sup>40</sup> *Parents’ Bill of Rights*, NYC DEP’T OF EDUC., <https://perma.cc/MN4D-M3AK> (last visited Apr. 24, 2019).

<sup>41</sup> See N.Y. Educ. Law § 2590-h(15)(c)(i) (McKinney 2019), which calls for “reasonable access by parents . . . to schools, classrooms, and academic and attendance records of their own children, consistent with federal and state laws, provided that such access does not disrupt or interfere with the regular school process,” but does not specifically discuss limited access letters.

<sup>42</sup> *Johnson v. Perry*, 859 F.3d 156, 164 (2d Cir. 2017).

arrangements. Perhaps most importantly, they are humiliating. In the alternative, if the DOE refuses to abolish limited access letters, then it must create a formal appeals process for these letters. This process should entail a fact-finding hearing before an impartial hearing officer—as is required in any New York City superintendent’s suspension of a student.<sup>43</sup> This process should also involve a dispositional hearing to determine the length for which a parent can be banned from campus—as is also done in any DOE superintendent’s suspension.<sup>44</sup> If not even a simple hearing is possible, then, at the very least, the DOE must allow parents to appeal the limited access letter in writing to a superintendent or neutral body—as other school districts, such as the Los Angeles Unified School District, require.

Reform of the limited access letter procedure will allow schools to better build trust with so-called “difficult” parents, and will allow both schools and parents to offer a more inclusive education for the real victims of New York’s limited access letter policy: the students.

In Part I, the article first discusses the current reality of limited access letters in New York City. It provides an overview of other limited access letter “moments” in the last few years. These incidents include the letters that two outspoken parents received after advocating for change at their elementary school in East Harlem; three separate limited access letters that a parent received at an East Village elementary school; and a limited access letter that a parent in the Bronx received after allegedly accosting an eight-year-old eating school breakfast. The article then discusses the lack of any DOE or New York State policy referring to the limited access letter practice in any way. The article analyzes New York State’s education law and associated appeals mechanism and concludes that these, too, provide insufficient (or nonexistent) remedy for parents seeking to contest a limited access letter.

In Part II, the article discusses why limited access letters violate federal and state law. It proposes multiple theories of liability in making this claim. The piece begins by analyzing the *Mathews v. Eldridge* procedural due process framework that the Supreme Court has used for decades. Analyzing the limited access letter process through this basic heuristic—which assesses, roughly, the public interest, private interest, and risk of erroneous deprivation in a taking—the piece concludes that the current lack of a hearing deprives parents of their Fifth and Fourteenth Amendment right to due process. The piece then discusses the small amount of

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<sup>43</sup> ADVOCATES FOR CHILDREN, AFC’S GUIDE TO SCHOOL SUSPENSIONS 9-11 (2012), <https://perma.cc/C33G-KZKC> (describing the hearing process outlined by Chancellor’s Regulations).

<sup>44</sup> *Id.* at 12-13.

case law in New York and across the nation addressing limited access letters. While noting that procedural due process may provide the strongest theory of liability, the piece also discusses the potential viability of an Article 78 New York State proceeding challenging limited access letters as arbitrary and capricious. The article observes the “arbitrary and capricious” roadmap created by the January 2019 case *Lujan v. Carranza*,<sup>45</sup> involving a challenge to a DOE letter very similar to a limited access letter. The piece also briefly discusses the possibility of DOE parents<sup>46</sup> bringing suit under a theory of racially disparate impact, while noting the limitations imposed by the 2001 Supreme Court case of *Alexander v. Sandoval*.

In Part III, the article presents a recommendation—outright abolition of the limited access letter practice, for the many reasons discussed above. In the alternative to this strongly preferred abolition, the article also proposes urgently needed reforms and solutions. The article discusses the Los Angeles Unified School District (LAUSD), which recently made major changes to its analogous “disruptive parent/person letter” process. In this discussion, the article provides an overview of extensive data that a Los Angeles parent advocacy group found when analyzing these LAUSD disruptive person letters. The article next highlights the reforms that Los Angeles put into place. These reforms, which New York City or New York State could adopt, include: a clear policy guidance document on the subject; a template for a warning letter and subsequent disruptive person letter; and a parent’s right to two levels of appeal in a simple, timely fashion. The piece suggests that, if limited access letters are not eliminated outright, these reforms provide a bare minimum of what the DOE must afford parents. Finally, the piece concludes with a call to end the due process violations of parents of color and parents of students with disabilities.

## I. LIMITED ACCESS LETTERS IN NEW YORK CITY

### A. *A Punishment for Outspoken Parents of Color and Parents of Children with Disabilities*

It is no coincidence that limited access letters—at least the ones publicly discussed in media—have gone almost exclusively to people of color

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<sup>45</sup> *Lujan v. Carranza*, 63 Misc. 3d 235, 239–40 (N.Y. Sup. Ct. 2019).

<sup>46</sup> The term “DOE parents” refers to parents of students who attend DOE schools. Many parents in New York City send their children to charter schools (e.g. Success Academy). While these charter schools remain subject to some New York State oversight, the degree to which charter schools must abide by DOE policies remains in dispute. As a result, this article focuses on parents of children who attend traditional DOE public community schools.

and/or parents of children with disabilities.<sup>47</sup> As one Black parent, who received three limited access letters in three years, said, “When you say stuff as a white man, you’re seen as expressing yourself. You’re passionate. You’re smart and challenging. Whenever I do anything, I’m seen as an angry black woman and aggressive. I’m a ‘pit bull.’”<sup>48</sup> Since a limited access letter can purport to target nebulous, subjective behavior, its use is especially prone to reflecting stereotypes in U.S. culture that people of color, particularly Black people, are angrier and more aggressive than white people.<sup>49</sup>

Kaliris Salas-Ramirez is a DOE parent born in Puerto Rico.<sup>50</sup> She is the parent of a special education student, Seba, and the co-president of the Parents Association at his school.<sup>51</sup> “Seba is my pride and joy,” she wrote in an article.

He is the center of my world. I do the things I do to make the world a better place for him. He struggles with emotional processing, and has issues around abandonment. At the beginning of the year, he was running away from school, a safety concern for sure, but he wanted to be at home.<sup>52</sup>

Salas-Ramirez had concerns about her son’s school, Central Park East 1 (“CPE1”).<sup>53</sup> In particular, she and other parents took issue with Monika Garg, the school’s new principal, who imposed significant school cultural changes.<sup>54</sup>

Salas-Ramirez received a limited access letter on May 1, 2017, after joining more than seventy percent of the families at CPE1 in requesting the removal of Principal Garg.<sup>55</sup> She received the letter after inviting a graduate student from the Columbia School of Journalism into CPE1.<sup>56</sup>

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<sup>47</sup> Note that, although the City does not keep track of data regarding limited access letters, every letter publicly discussed in media pieces involves either a parent of color or the parent of a child with disabilities. This is the author’s experience.

<sup>48</sup> Zimmer, *supra* note 17.

<sup>49</sup> See, e.g., Trina Jones & Kimberly Jade Norwood, *Aggressive Encounters & White Fragility: Deconstructing the Trope of the Angry Black Woman*, 102 IOWA L. REV. 2018, 2045-52 (2017).

<sup>50</sup> Kaliris Salas-Ramirez, *Kaliris Salas-Ramirez: Caught in the Crossfire of a Battle for Democracy*, ECE POLICYMATTERS (May 2, 2017), <https://perma.cc/5C4X-Z2CB>.

<sup>51</sup> *Id.*

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

<sup>54</sup> *Id.*

<sup>55</sup> *Id.*; *CPE 1 Parents to Wage Strike Demanding Mayor de Blasio Remove School’s Principal*, ED NOTES ONLINE (May 5, 2017), <https://perma.cc/YJF3-PCTX> (describing the action around, and request for, Garg’s removal, and listing Ms. Salas-Ramirez as a point of contact).

<sup>56</sup> Dartunorro Clark, *Controversial Harlem Principal Bars Parents from Campus*, DNAINFO (May 2, 2017, 9:24 AM) (alteration in original), <https://perma.cc/E7RM-TF5Z>.

The journalism student began taking photographs of empty classrooms; Garg wrote in the letter that “bringing press on site without authorization put[s] children and teachers at risk.”<sup>57</sup> Salas-Ramirez wrote about the effect the limited access letter had on her son’s education:

Under the terms of the letter, I cannot take my son to his classroom, or pick him up from school—unless I have been announced or have made an appointment. The security staff must escort him to his classroom. Nor can I be at the school to assist parents with their concerns. I don’t know if I can attend leadership meetings, or meet with the school psychologist or counselor about my son’s Individualized Education Plan.<sup>58</sup>

Principal Garg also gave a letter to Jen Roesch, a parent of a child in the special education program at CPE1.<sup>59</sup> Roesch does not appear to have publicly self-identified her race. Roesch reported that her letter came after allegations that she was “recording on her cell phone in the school.”<sup>60</sup> Roesch, however, denied the accusations, explaining that she photographed the hallways and bulletin boards to document the school’s lack of compliance with a DOE-required policy mandating the public display of anti-bullying posters.<sup>61</sup>

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Advocates know very little regarding limited access letters. When a journalist filed a FOIL request, the DOE wrote back that it did not keep data on these letters.<sup>62</sup> At least some limited access letters—such as the ones Latasha Battle, Norman Johnson, Kaliris Salas-Ramirez, and Jen Roesch all received—appear to be retaliatory in nature.<sup>63</sup> None of these incidents seem to involve any violence or potential danger to the rest of the school. Three of the four parents present as people of color, and at least two of the parents’ children are identified as having special needs.

An anonymous commenter on an internet blog for New York City public school parents, for instance, wrote in June 2015 that they received a limited access letter from the principal of P.S. 109 in the Bronx.<sup>64</sup> The commenter, like Roesch and Salas-Ramirez, also identifies as a parent of

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<sup>57</sup> *Id.*

<sup>58</sup> Salas-Ramirez, *supra* note 50.

<sup>59</sup> Int’l Socialist Org., *supra* note 27.

<sup>60</sup> *Id.*

<sup>61</sup> *Id.*

<sup>62</sup> Zimmer, *supra* note 17.

<sup>63</sup> See Int’l Socialist Org., *supra* note 27; see also Holmes et al., *supra* note 4.

<sup>64</sup> Anonymous, Comment to *NYC Principal Hall of Shame: Why Does DOE Protect Abusive Principals?*, NYC PUB. SCH. PARENTS (June 20, 2015, 6:57 PM), <https://perma.cc/N4SZ-B7DS>.

a child with a disability.<sup>65</sup> As with the other parents who received a letter, this commenter also states that they took a stand against the school's administration:

I've been bullied by my children principle at a elementary school in the bronx p.s 109 in the bronx. she has taken my rights away from me with my 2 disabled children I've been slapped in my face with a evolope, I've been followed by the staff. My children who are victims of domestic violence have been snatched out of there class and put into a kindergarten class where my son urinated on himself due to believing that our abuser was there to hurt him. As a parent the principle josette Claudio stop all staff from talking to me I received a limited access letter from the princible after I filed a complaint against her she them allowed herself to become personal with me. I've reported this behavior to the doe and the board of education but as always they protect their princible and continue to allow her to treat me and other parents this way. Over 28 teachers left the school last June and this June of 2015 many more have left due to the horrible behavior of this principle.<sup>66</sup>

Limited access letters may also be correlated with a degree of parent activism within a school community. For instance, Stephanie Thompson, a woman who identifies as Black and a parent of a child at an East Village public school, held a seat on the Lower East Side/East Village District 1 Community Education Council (CEC).<sup>67</sup> Thompson in fact received three limited access letters in three years.<sup>68</sup> Thompson says she received one letter "for complaining about her principal" and a second "for criticizing her superintendent within earshot."<sup>69</sup> Roesch and Salas-Ramirez, too, held leadership roles in their school community. Specifically, Salas-Ramirez was the co-chair of the CPE1 Parent Association, an elected position.<sup>70</sup> As part of her advocacy against the principal, Salas-Ramirez stated that she had "attended and spoken at meetings of the Panel for Educational Policy, on which New York City's [then] chancellor Carmen Fariña s[at], and the Community Education Council of [her] district."<sup>71</sup> As part of this work, Salas-Ramirez also met with many elected officials,

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<sup>65</sup> *Id.*

<sup>66</sup> *Id.* This comment is preserved as originally written.

<sup>67</sup> Zimmer, *supra* note 17.

<sup>68</sup> *Id.*

<sup>69</sup> *Id.*

<sup>70</sup> Int'l Socialist Org., *supra* note 27.

<sup>71</sup> Salas-Ramirez, *supra* note 50.

including a member of Congress.<sup>72</sup> Roesch, too, joined in this advocacy.<sup>73</sup> A Change.org petition created to support these parents described Roesch as an “outspoken critic[] of Principal Garg’s leadership.”<sup>74</sup>

Limited access letters may also be issued in response to an incident of violence. These incidents may consist of the very narrow purpose the DOE originally had in mind for limited access letters—based on a “serious incident at the school that required the involvement of School Safety Agents.”<sup>75</sup> While limited access letters addressing violence are still not legitimate—as they essentially allow a school to circumvent the restraining order process—one may perhaps sympathize more with school officials who write them. On April 27, 2018, for instance, a mother at P.S. 146 in the Bronx allegedly interrupted an eight-year-old who was eating breakfast at the school cafeteria and “burst in and hauled him off to the principal’s office.”<sup>76</sup> Police and EMTs responded to the incident.<sup>77</sup> The student was treated at a hospital for a stiff neck the next day.<sup>78</sup> His mother later sought a safety transfer to another school.<sup>79</sup> The mother who allegedly attacked the student received a limited access letter.<sup>80</sup> Meanwhile, all parents at the school received a limited access letter<sup>81</sup> “informing them not to enter the Cauldwell Ave. building during school hours.”<sup>82</sup>

### B. *A Policy Without a Guide*

Limited access letters appear to be a “shadow” policy. They are not covered in the Chancellor’s Regulations in the relevant sections. They cannot be found, apparently, in state or city laws. And few people, if anyone, seem to know anything about what legal basis allows them to exist at all.<sup>83</sup>

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<sup>72</sup> *Id.*

<sup>73</sup> Int’l Socialist Org., *supra* note 27.

<sup>74</sup> *Id.*

<sup>75</sup> Zimmer, *supra* note 17.

<sup>76</sup> Kerry Burke et al., *Bronx Mom Claims Another Parent Dragged Her Child by Neck as He Ate Breakfast at School*, N.Y. DAILY NEWS (May 7, 2018, 10:36 PM), <https://perma.cc/98EC-J64Y>.

<sup>77</sup> *Id.*

<sup>78</sup> *Id.*

<sup>79</sup> Christina Carrega & Ben Chapman, *Schools OK Bronx Third Grader’s Transfer, but Still Won’t Say Who Grabbed Him by Neck*, N.Y. DAILY NEWS (May 9, 2018, 2:41 AM), <https://perma.cc/J8Y5-HWGT>.

<sup>80</sup> *Id.*

<sup>81</sup> While the line between a limited access letter and a schoolwide policy may blur, I classify this letter as a limited access letter because it takes away the right of a parent to be on campus based on actions that have taken place at school.

<sup>82</sup> Burke et al., *supra* note 76.

<sup>83</sup> Based on the author’s consultation with other attorneys practicing special education law in New York City.



Principals seem to vary widely in how, when, and whether they choose to wield limited access letters at all. No DOE regulations describe any discretion in how principals may choose to use these limited access letters. According to Nequan McLean—a leader on the Bedford-Stuyvesant District 16 Community Education Council—one principal in Bed-Stuy “was giving out limited access letters like candy.”<sup>84</sup> Since DOE regulations do not provide guidance to principals in how they may choose to use these limited access letters, principals have unfettered discretion. In general, the Chancellor’s Regulations, a set of less-than-transparent legal documents, explain most of the DOE’s policies. But these supposedly comprehensive Regulations are utterly silent with respect to limited access letters. The Chancellor’s Regulations, consisting of four volumes, cover a wide range of material spanning admissions, budgeting, employee concerns, and countless other topics in between.<sup>85</sup> While available online and free to the public, they make for dense reading material hardly accessible to the majority of New York City public school parents (or anyone else).<sup>86</sup> Even if banned parents were to labor through these tomes in search of an explanation of limited access letters, they would come up empty-handed. The DOE Chancellor’s Regulations simply do not address limited access letters at all. Volume D, which addresses “parent and community involvement,” is entirely silent on the subject.<sup>87</sup> The regulations in this volume instead focus on FOIL requests, school leadership teams, political campaigns, community education councils, and use of DOE buildings for non-academic purposes.<sup>88</sup>

Chancellor’s Regulation A-412, “Security in the Schools,” also does not discuss limited access letters.<sup>89</sup> Part A of section II of this Regulation describes the procedure in place for “Notification Requirements for School-Related Crimes.”<sup>90</sup> But this Regulation does not refer to limited access letters in any way, shape, or form.<sup>91</sup> Part B of section II would

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<sup>84</sup> Zimmer, *supra* note 17.

<sup>85</sup> *Chancellor’s Regulations*, NYC DEP’T OF EDUC., <https://perma.cc/5X8G-8WRS> (last visited Apr. 27, 2019).

<sup>86</sup> See NYC DEP’T OF EDUC., REGULATION OF THE CHANCELLOR A-190: SIGNIFICANT CHANGES IN SCHOOL UTILIZATION AND PROCEDURES FOR THE MANAGEMENT OF SCHOOL BUILDINGS HOUSING MORE THAN ONE SCHOOL (2010), <https://perma.cc/CYX3-B9Z9>, for a particularly dense read.

<sup>87</sup> *Volume D Regulations*, NYC DEP’T OF EDUC., <https://perma.cc/9EXE-KWKQ> (last visited Apr. 27, 2019).

<sup>88</sup> *Id.*

<sup>89</sup> NYC DEP’T OF EDUC., REGULATION OF THE CHANCELLOR A-412: SECURITY IN SCHOOLS (2006), <https://perma.cc/2E9S-KAXM>.

<sup>90</sup> *Id.* § II.A.

<sup>91</sup> *Id.* Section II of this Regulation discusses crimes committed by students, sexual misconduct by a DOE employee, and medical emergencies. The Regulation generally directs

seem to be more directly on point for limited access letters, as this section describes the “Notification Requirements for School-Related Incidents.”<sup>92</sup> While the Regulations do not define an “incident,”<sup>93</sup> this term might include Norman Johnson’s shouting match with the principal of Capital Prep; the unwanted entry of a student journalist who started taking too many pictures; or the alleged physical assault on a student eating school breakfast.

But this section also does not reference limited access letters. The entirety of the text of this section is as follows:

B. Notification Requirements for School-Related Incidents

The following procedures must be followed if a SSA/DOE employee learns of or witnesses a school-related non-criminal incident, accident or medical emergency which may require school disciplinary or other follow-up action and/or central/superintendent notification:

1. If an individual requires immediate medical attention, the SSA/DOE shall follow the same procedures set forth in II.4 above;
2. The SSA/DOE must notify the principal/designee;
3. The principal/designee must determine what, if any, disciplinary or other follow-up action shall be taken and then contact the superintendent and the parent, where a student is involved;
4. If the incident involves corporal punishment, the principal must notify the Office of Special Investigations.<sup>94</sup>

Item 3 of this section, section II.B, does not make any reference to limited access letters.<sup>95</sup> The item seems to grant the principal carte blanche to fashion any or no discipline at all. The section also does not mention any other type of specific follow-up measure for the principal to take.<sup>96</sup> Per item 3, when a student is involved in an incident, the principal must notify the superintendent and the parent.<sup>97</sup> However, beyond this de

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school safety agents to call 911, notify the principal, inform the student’s parent, and take other similar measures. The Section does not address misconduct by a parent, nor does it reference limited access letters.

<sup>92</sup> *Id.* § II.B.

<sup>93</sup> *See id.*

<sup>94</sup> *Id.* (emphasis added).

<sup>95</sup> *See* NYC DEP’T OF EDUC., REGULATION OF THE CHANCELLOR A-412: SECURITY IN SCHOOLS (2006), <https://perma.cc/2E9S-KAXM>.

<sup>96</sup> *See id.*

<sup>97</sup> *See id.*

minimis notification requirement, the principal seems to have no constraints at all. The next section, II.C., discusses the “Written Reporting Requirements” but, again, this section does not address limited access letters at all.<sup>98</sup> Overall, then, the DOE’s Chancellor’s Regulations—which are supposed to detail all the DOE’s policies—make zero references to limited access letters.

### *C. A Snap Decision Without Any Chance for DOE Appeal*

The Chancellor’s Regulations also offer no opportunity for a parent to appeal a limited access letter. Indeed, a Department of Education website that specifically lists other appeals available under the Chancellor’s Regulations—such as appealing a “transfer to another school based on residency,” “a zoning line decision,” or “an approved proposal to locate or co-locate a charter school in a public school building”—makes no reference to limited access letters.<sup>99</sup>

The parent’s best option may come from another less-than-transparent process: the Division of Family and Community Engagement (“FACE”) complaint procedure.<sup>100</sup> But this grievance process does not appear in the Chancellor’s Regulations. Rather, the same informal DOE website describing the appeals procedures describes what parents are to do under this FACE process.<sup>101</sup> The procedure seems designed for the exclusion of a child—rather than a parent—from the school.<sup>102</sup>

For any other issues not addressed in the regulations—such as, again, limited access letters—the DOE includes only a boilerplate catchall procedure.<sup>103</sup> First, the DOE suggests that an aggrieved parent speak with the school’s parent coordinator and fill out a form.<sup>104</sup> Once again, the form makes no reference to limited access letters.<sup>105</sup> After a parent submits the

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<sup>98</sup> *Id.* § II.C. This section requires the principal to prepare an incident report, attempt to obtain handwritten statements from parties and witnesses, and comply with other procedural requirements. However, once again, nothing in the section discusses limited access letters as a possible consequence.

<sup>99</sup> *How to File an Appeal or Complaint*, NYC DEP’T OF EDUC., <https://perma.cc/GEJ5-G7JS> (last visited Apr. 28, 2019).

<sup>100</sup> *Id.*

<sup>101</sup> *Id.*

<sup>102</sup> *Id.* The relevant section is labeled generally “Complaints Regarding Exclusion from School,” but the site only makes reference to a child’s exclusion.

<sup>103</sup> *Id.*

<sup>104</sup> *Id.*

<sup>105</sup> Division of Family & Community Engagement Parent Intake/Referral Form, NYC DEP’T OF EDUC., <https://perma.cc/9D3Q-5WAD> (last visited June 11, 2019). This complaint form includes only the bare minimum. Parents are asked to fill out demographic information and then to “please state the nature of [their] complaint[,] [i]ndicating any actions that have

form, the district-level family support coordinator may get involved, and the parent may need to “contact[] officials at the school or district level,” yet it is unclear who needs to be contacted, the necessary timeframe, or exactly how the “family support coordinator will then work with [parents] to resolve the issue.”<sup>106</sup> No further details are given in this section as to specific points of law, procedures, or other protections for parents.

Finally, the website describes interim measures:

If at any point in the complaint process staff at the school, district, borough, or central level determine that it is necessary to take immediate steps or measures to address your concerns, prior to the complaint being fully investigated or resolved, the Chancellor’s Office/Division of Family and Community Engagement will recommend the appropriate actions to help your child and address your concerns.<sup>107</sup>

However, once again, the site remains geared toward complaints involving children and provides no details on specific interim protections for parents who have received a limited access letter. It is a bureaucratic nightmare that never ends.

#### *D. A State Appeal Process Mired in the Hell of Bureaucracy*

Within the state education system, parents retain an “appeal right”—but it is extraordinarily cumbersome and almost never used. The DOE “Appeal or Complaint” web site discussed above notes in passing that parents and others “may appeal a decision by the New York City Department of Education under the procedures laid out in New York Education Law § 310.”<sup>108</sup> Does a limited access letter constitute a decision at all? It seems that the answer is yes—but only a handful of appeals of a limited access letter seem to have ever taken place.<sup>109</sup> While parents in other districts in New York State have appealed these letters, there does not seem

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already taken place.” *Id.* Parents are also advised that if the complaint is “particularly sensitive” in nature, they may refer the complaint form directly to the District Office. *How to File an Appeal or Complaint*, *supra* note 99.

<sup>106</sup> *How to File an Appeal or Complaint*, *supra* note 99.

<sup>107</sup> *Id.* To clarify, these interim measures are for a parent’s grievance against a school, not vice versa—so this section would not logically support a school’s effort to issue a limited access letter.

<sup>108</sup> *See id.* In particular, N.Y. EDUC. LAW § 310 states that “[an appeal] petition may be made in consequence of any action: . . . [b]y any other official act or decision of any officer, school authorities, or meetings concerning any other matter under this chapter, or any other act pertaining to common schools.” N.Y. EDUC. LAW § 310(7) (McKinney 2019).

<sup>109</sup> *See* discussion of Appeals of Robert P. Oliver, No. 14,829 (N.Y. Educ. Dep’t Jan. 9, 2003), *infra* note 124. The other appeals are: Appeal of Paul and Kathleen Havens, No. 14,758 (N.Y. Educ. Dep’t July 24, 2002), <https://perma.cc/5MDX-5552> (involving a blanket limited

to have ever been an appeal of a New York City DOE limited access letter.<sup>110</sup>

Furthermore, this appeal process is not nearly as straightforward as the DOE makes it sound. The following is an attempt to document all the steps a parent must take to appeal a limited access letter to the New York State Education Department (“NYSED”).

### 1. File a Complaint to the DOE District Regional Superintendent

The DOE first directs the parent to refer to NYSED’s appeal procedures.<sup>111</sup> NYSED then directs parents in New York City to send a complaint directly to the District Superintendent.<sup>112</sup> A parent then must determine who the relevant superintendent is—no small feat in a city with forty-six superintendents whose authority can depend on geography, grade level, or a student’s special needs.<sup>113</sup>

Neither NYSED or DOE appears to have made sample complaints for this level of the appeal.<sup>114</sup> However, based on the author’s experience with parents seeking to contest other educational issues (e.g. in a special

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access letter a principal issued in the wake of Sept. 11, 2001); Appeal of Christine Canazon, No. 12,997 (N.Y. Educ. Dep’t Aug. 31, 1993), available at <https://perma.cc/QZJ9-GNVN> (involving a parent not permitted to observe a health class).

<sup>110</sup> See *Commissioner’s Decisions*, N.Y. STATE EDUC. DEP’T, <https://perma.cc/Y5VE-5FM2>. A search of the New York State Education Department Office of Counsel’s decisions for the term “limited access letter” yields no results. Nor does the term “parent ban” or variations yield any results. A number of decisions do describe a school’s decision to ban a teacher or other staff member from school property. See, e.g., Appeal of Anonymous, No. 15,855 (N.Y. Educ. Dep’t Dec. 12, 2008), <https://perma.cc/NPL2-4SRQ> (overturning a school’s attempt to ban a guidance counselor whose husband had made threatening remarks via telephone); Appeal of Mark Bratge, No. 17,433 (N.Y. Educ. Dep’t July 5, 2018), <https://perma.cc/H7BQ-V8SU> (discussing the appeal of a teacher banning him from school property while on administrative leave and denying the appeal solely for procedural reasons, due to untimely filing). Note also that at least one NYC DOE parent did appeal a letter banning him from campus, but this letter was based on a decades-old sex offense conviction, not any alleged misconduct on school grounds. See Appeal of R.L., No. 17,359 (N.Y. Educ. Dep’t Mar. 26, 2018), <https://perma.cc/897Z-TXFK>. He ultimately appealed the NYSED decision in the Albany County Supreme Court. *Lujan v. Carranza*, 63 Misc. 3d 235 (N.Y. Sup. Ct. 2019).

<sup>111</sup> *How to File an Appeal or Complaint*, *supra* note 99.

<sup>112</sup> *New York State ESSA-Funded Programs Complaint Procedures*, N.Y. STATE EDUC. DEP’T, <https://perma.cc/6WMN-UZH2> (last visited Apr. 8, 2019).

<sup>113</sup> *Superintendents*, NYC DEP’T OF EDUC., <https://perma.cc/P4DC-DDFZ> (last visited Apr. 8, 2019). Note that, in the author’s experience, parents may have trouble accessing information involving the DOE, even if it is available on a public website.

<sup>114</sup> See *Sample Forms*, N.Y. STATE EDUC. DEP’T, <https://perma.cc/5JUF-H8AK> (last visited Mar. 12, 2019), where the NYSED has made sample forms available for unrepresented pro se parents at the state appeal level, but not for the initial DOE complaint level that the NYSED directs the parent to initiate.

education context), a brief email or letter to the superintendent may suffice. While, again, no samples appear to exist, a complaint might be as simple as a parent writing, “I disagree with the limited access letter, because I am not a danger to the school or community.” But without a clear process or samples, parents are left trying to make sense of their options.

2. Wait Up to Thirty Business Days, Then File a Complaint with the DOE’s Office of State/Federal Education Policy and School Improvement

The hell of bureaucracy continues. After first sending a complaint to the correct district superintendent, the school district then has thirty business days—six weeks—to take any action (e.g., retracting the limited access letter), during which time the parent’s restricted access continues.<sup>115</sup> If the regional superintendent does not resolve the parent’s complaint within thirty business days or fails to resolve it as the parent sees fit, then the parent can send a complaint to the DOE’s Office of State/Federal Education Policy and School Improvement.<sup>116</sup>

3. Wait Up to Thirty More Business Days, Then File a Complaint with the New York State Education Department

The parent waits for a decision from the DOE’s Office of State/Federal Education Policy and School Improvement—which could take up to thirty more business days—before sending a complaint to the New York State Education Department.<sup>117</sup>

Taking a step back for a moment: a principal can issue a limited access letter on a whim, without the slightest shred of oversight or delay. No DOE regulations bar or even guide the principal’s decision-making process before sending the letter.<sup>118</sup> A parent, by contrast, could be delayed twelve weeks—even longer if the procedures are not followed in a timely manner somewhere along the DOE chain—before they are able to file a complaint with the State of New York.<sup>119</sup> The parent must navigate multiple local and state bureaucracies, craft a sophisticated legal argument, and continuously determine who and where to send a complaint—not to mention, what to include in the complaint. The existing avenues to appeal these letters fall short, especially considering that the letters ban parents from important milestones in their child’s education, plenty of

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<sup>115</sup> See *New York State ESSA-Funded Programs Complaint Procedures*, *supra* note 112.

<sup>116</sup> *Id.*

<sup>117</sup> *Id.*

<sup>118</sup> See discussion of NYC Dep’t of Educ. Chancellor’s Regulations, *supra* Section I.B.

<sup>119</sup> See *New York State ESSA-Funded Programs Complaint Procedures*, *supra* note 112.

which would be missed over a twelve-week period during which a parent is left navigating their procedural options in the dark.

#### 4. Cross Every “T,” Dot Every “I”: Legal Papers, Personal Service, and Payment

Even after waiting for months, the New York State-level appeal process remains incredibly difficult at a procedural level. The process requires the parent to submit formal legal documents that an attorney would normally prepare.<sup>120</sup> The New York State Education Department’s Office of Counsel has prepared an appeals information web page for parents attempting to appeal pro se (without assistance of counsel), including brief sample forms.<sup>121</sup> However, the requirements are technical and difficult. The parent must complete the following: a Notice of Petition; a Petition, which must be verified by a notary public; a caption for the case; and personal service of the papers via hand delivery to the DOE’s clerk, any “member or trustee” of the DOE, or “the superintendent of schools or someone in the superintendent’s office who has been designated by the board to accept service.”<sup>122</sup> The hand delivery requirement for service seems particularly unfair from a power imbalance perspective, given the lower burden on the defendant Education Department, which is permitted to respond “by mail.”<sup>123</sup> In one of the very small number of NYSED appeals addressing limited access letters, the NYSED dismissed most of the entire appeal on the parent’s failure to perform personal service alone.<sup>124</sup>

Adding further to the imbalance of power, the parent must also provide payment to the state in order to start the appeal. Specifically, the parent must submit a check for \$20 to the New York State Education Department.<sup>125</sup> The Commissioner of Education may waive this fee, but only if the petitioner makes a request for this waiver via affidavit.<sup>126</sup> Unless a

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<sup>120</sup> See, e.g., *Instructions and Sample Forms for Filing an Appeal for Petitioners Not Represented by an Attorney*, N.Y. STATE EDUC. DEP’T, <https://perma.cc/42RA-J754> (last visited Apr. 28, 2019).

<sup>121</sup> *Id.*

<sup>122</sup> *Id.*

<sup>123</sup> *Id.*

<sup>124</sup> See Appeals of Robert P. Oliver, No. 14,829 (N.Y. Educ. Dep’t Jan. 9, 2003), available at <https://perma.cc/WF9K-V986> (“Section 275.8 of the Commissioner’s regulations requires that a petition be personally served upon the named respondents. The record shows that petitioner served the petitions upon the [B]oard of [E]ducation but failed to serve the individual respondents Leland Christensen, Superintendent Evelyn Blose Holman, Security Director Paul Brady, Germaine Moore and the individual board members named in the caption. Therefore, the appeals are dismissed as to all parties except respondent [B]oard of [E]ducation.”).

<sup>125</sup> See *Instructions and Sample Forms for Filing an Appeal for Petitioners Not Represented by an Attorney*, *supra* note 120.

<sup>126</sup> *Id.*

parent happens to have connections to a free notary, parents may also need to pay for a notary public. The parent has thirty days—a long time for a parent to wait when excluded from school, but perhaps not a long time when attempting to complete pro se legal papers—from the date of the “decision or action complained of” to complete all of these requirements.<sup>127</sup> If the parent seeks a temporary “stay” of the limited access letter, the parent must specifically ask for one, apparently using the exact language the NYSED requires.<sup>128</sup>

In terms of substantive law, meanwhile, the burden of proof for a parent is high. NYSED’s Office of Counsel states that the burden of proof rests on the parent bringing the petition.<sup>129</sup> NYSED continues by stating that a parent “has the burden of demonstrating a clear legal right to the relief requested and the burden of establishing all the facts upon which he or she seeks relief.”<sup>130</sup> The Office of Counsel instructions continue by noting that the parent may meet this burden by submitting exhibits, affidavits, or other forms of proof.<sup>131</sup> The Office of Counsel explicitly warns that anything less—such as allegations or conclusory statements—will not suffice.<sup>132</sup> A banned parent, then, must not only navigate this appeals process after waiting many weeks, but must submit “affidavits, exhibits or other proof” in order to return to school.<sup>133</sup>

The Office of Counsel says that New York will send a so-called Letter of Resolution “[w]ithin 60 State agency work days” of receiving the complaint.<sup>134</sup> This Letter of Resolution will explain whether the agency has chosen to sustain the parent’s complaint or overrule it.<sup>135</sup> The letter will also specify “if any corrective action is required.”<sup>136</sup> If the appeal is unsuccessful, the Office of Counsel notes that parents may appeal to the United States Department of Education in Washington, D.C.<sup>137</sup>

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<sup>127</sup> *Id.*

<sup>128</sup> *Id.* (“You must include as part of your Notice of Petition an additional paragraph stating: ‘Please take further notice that the within petition contains an application for a stay order. Affidavits in opposition to the application for a stay must be served on all other parties and filed with the Office of Counsel within three (3) business days after service of the petition.’”).

<sup>129</sup> *General Information*, N.Y. STATE EDUC. DEP’T, <https://perma.cc/VAZ9-ECZG> (last visited Apr. 28, 2019).

<sup>130</sup> *Id.*

<sup>131</sup> *Id.*

<sup>132</sup> *Id.*

<sup>133</sup> *Id.*

<sup>134</sup> *New York State ESSA-Funded Programs Complaint Procedures*, *supra* note 112.

<sup>135</sup> *Id.*

<sup>136</sup> *Id.*

<sup>137</sup> *Id.*



In the meantime, what about school pick-up? What about parents who work more than one job and cannot afford the time involved in writing such a cumbersome appeal? The system is designed, it seems, to keep parents unaware of their rights and unable to exercise them. Most problematically, it is unclear if any parents in New York City receiving a limited access letter have ever completed this appeals process, in any context, at all.<sup>138</sup>

## II. WHY LIMITED ACCESS LETTERS VIOLATE THE LAW

### A. *Limited Access Letters Violate Procedural Due Process*

This article advances the argument, recognized by the Second Circuit in the 2017 case of *Johnson v. Perry* but not enforced in New York City's DOE, that parents who receive a limited access letter are not receiving their constitutional due process rights. These rights, discussed below, originate under the Fifth Amendment and Fourteenth Amendment of the U.S. Constitution. More concretely, parents cannot be banned from a child's school property without first having an opportunity to be heard. Just as people must have a hearing before almost any other type of deprivation takes place—whether it be a criminal trial before a person is deprived of personal liberty; a grievance hearing before losing public housing; or even a traffic court hearing before being forced to pay a speeding ticket—a parent must have a right to present her, his, or their side of the story.

#### 1. *Mathews v. Eldridge* Balancing of Interests

For decades, the basic framework for procedural due process in American law has been governed by *Mathews v. Eldridge*. In this 1976 case, the Supreme Court identified a basic three-part balancing test for determining whether a recipient of a government benefit is entitled to a pre-deprivation hearing: (1) “the private interest,” which translates roughly to the importance an individual places on the benefit; (2) the risk of “erroneous deprivation” if no hearing were to take place; and (3) “the public interest,” which translates roughly to the government's valuation of the liberty or property and the financial cost and administrative burden of the hearing process.<sup>139</sup> In order to trigger this *Mathews* balancing test, an individual must have a protected liberty or property interest implicated,

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<sup>138</sup> Based on a review of the NYSED Commissioner's decisions; see discussion *supra* Section I.D.

<sup>139</sup> *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).

which brings the Due Process Clause of the Fifth Amendment and Fourteenth Amendment into play.<sup>140</sup>

As a simple but perhaps clear example: a court may permit a towing company to remove a parked car that is blocking traffic on a highway, even before the car's owner has a chance to contest the taking in court. The car itself, as a form of tangible private property, represents a protected property interest implicating the Due Process Clause of the Fifth Amendment and Fourteenth Amendment. The public interest in keeping roads safe for other motorists is extremely high. The risk of erroneous deprivation, meanwhile, may be quite low: in other words, the fact-finding needed to determine whether a parked car is indeed blocking traffic on a highway or not may be extremely simple. These two factors almost certainly outweigh the car owner's high private interest in the individual car.

## 2. DOE Student Discipline as DOE Limited Access Letters Analogue

Student discipline and suspension procedures in the DOE—which already invoke a *Mathews*-style hearing—may provide a helpful analogue for limited access letters. The DOE seems to have already accepted, in essence, that procedural due process and *Mathews* balancing necessitate a pre-deprivation hearing in the context of a superintendent's suspension.

As established by *Goss v. Lopez*, the right of a student who is facing discipline to participate in public education represents a protected Fourteenth Amendment property and liberty interest.<sup>141</sup> This protected interest triggers *Mathews* balancing. In New York City, a DOE school is permitted to remove a student immediately from the classroom under certain circumstances.<sup>142</sup> However, a student receives notice and opportunity to be heard within one school day of the removal.<sup>143</sup> When a DOE school issues a more serious superintendent's suspension—any suspension that

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<sup>140</sup> *Id.* at 332 (“Procedural due process imposes constraints on governmental decisions which deprive individuals of ‘liberty’ or ‘property’ interests within the meaning of the Due Process Clause of the Fifth or Fourteenth Amendment.”).

<sup>141</sup> *Goss v. Lopez*, 419 U.S. 565, 579 (1975) (“At the very minimum, therefore, students facing suspension and the consequent interference with a protected property interest must be given some kind of notice and afforded some kind of hearing.”).

<sup>142</sup> NYC DEP'T OF EDUC., REGULATION OF THE CHANCELLOR A-443: STUDENT DISCIPLINE PROCEDURES § III.A.2 (2004), <https://perma.cc/LR4H-RA3K> (“If the student's presence in [the] classroom poses a continuing danger and presents an ongoing threat of disruption to the academic process, the student may be removed immediately, and such notification to the student and opportunity to be heard must be provided within one school day of the removal.”) [hereinafter STUDENT DISCIPLINE PROCEDURES].

<sup>143</sup> *Id.*

may last more than five days<sup>144</sup>—the DOE must schedule a hearing for the student within five days of the suspension.<sup>145</sup>

At the hearing, the student has many procedural rights. For instance, the student can introduce exculpatory evidence, provide live testimony, and cross-examine witnesses.<sup>146</sup> An attorney or non-attorney advocate may represent the student.<sup>147</sup> The student also has a right to an appeal within the DOE.<sup>148</sup> In the language of *Mathews*, then, the DOE seems to have determined that the student's private interest in receiving an education outweighs the school's public interest in immediately punishing students who allegedly violate discipline rules, with the risk of erroneous deprivation—i.e., inadvertently punishing a student who does not break any rules—high enough to warrant a right to a hearing.

### 3. *Johnson v. Perry, Troxel v. Granville*, and a Parent's Right to Be on School Grounds

Extending the logic of the DOE student suspension procedure to the context of limited access letters—which both constitute parts of the school-to-prison pipeline<sup>149</sup>—this *Mathews* framework should illustrate the need for a pre-deprivation hearing.

In a limited access letter context, *Mathews* balancing starts with a determination of the public and private interests. The public interest would seem to be school safety. A DOE school, that is, wants to keep students, teachers, and other school staff safe from allegedly disruptive parents. The private interest would seem to be the interest of a parent in being on school grounds. Parents, that is, want to make sure they can participate fully in their child's education. Finally, *Mathews* balancing requires an assessment of the risk of erroneous deprivation. This erroneous deprivation would seem to mean the risk that a school would wrongly exclude a non-disruptive parent by falsely concluding that the parent is disruptive.

But will this balancing even take place at all? To trigger *Mathews* balancing under the Due Process Clause of the Fifth and Fourteenth Amendment, parents must first demonstrate that they have a protected liberty or property interest.<sup>150</sup> In non-lawyer terms: do parents have a right to be at their child's school?

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<sup>144</sup> *Suspensions*, NYC DEP'T OF EDUC., <https://perma.cc/2FKY-U48X> (last visited Apr. 28, 2019).

<sup>145</sup> STUDENT DISCIPLINE PROCEDURES, *supra* note 142, § III.B.3(s)(1).

<sup>146</sup> *Id.* § III.B.3(n)(1)-(23).

<sup>147</sup> *Id.* § III.B.3(n)(12).

<sup>148</sup> *Id.* § III.B.3(n)(23).

<sup>149</sup> See discussion *supra* pp. 338-41.

<sup>150</sup> *Mathews v. Eldridge*, 424 U.S. 319, 332 (1976).

In *Johnson v. Perry*—the Connecticut case described earlier—the District of Connecticut, and the Second Circuit as well (by declining to overturn the District Court), answered this question: yes—parents do have a right to be on their child’s school campus.<sup>151</sup> The District of Connecticut, reviving parent Johnson’s due process claims *sua sponte*, stated that the trial court “was mistaken to dismiss plaintiff’s due process claim, as defendant’s actions deprived plaintiff of a recognized liberty interest.”<sup>152</sup> In support of this right, the District Court discussed *Troxel v. Granville*, a 2000 Supreme Court case involving a custody battle between parents and grandparents.<sup>153</sup> The *Troxel* court, making extensive note of earlier Supreme Court cases, highlighted the “interest of parents in the care, custody, and control of their children.”<sup>154</sup> The *Johnson* court applied this property interest to the specific locus of limited access letters and a parent’s right to be at a child’s school:

Banning a parent from his child’s public school infringes upon the parent’s constitutional liberty interest in directing the education of his child. Although the State has authority to restrict school access to ensure a safe and productive environment, it may not so significantly prohibit an individual parent from normal school access without affording the parent a fundamentally fair opportunity to contest the State’s asserted reasons for doing so.

At a minimum, due process requires notice and an opportunity to be heard “at a meaningful time and in a meaningful manner.”<sup>155</sup>

In the context of New York City and New York State, *Johnson v. Perry* remains the law of the land. The Second Circuit, ruling in 2017 on an appeal of *Johnson v. Perry* on technical grounds, left this aspect of the decision—establishing a parent’s Fifth Amendment liberty interest in being on school grounds—undisturbed.<sup>156</sup>

With the parent’s property interest to be on campus established by *Johnson*, the rest of the *Mathews* due process framework establishes a right to a pre-deprivation hearing. Limited access letters significantly implicate the private interests of parents in being able to set foot on their

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<sup>151</sup> See *Johnson v. Perry*, 140 F. Supp. 3d 222, 229 (D. Conn. 2015), *aff’d in part, rev’d in part, dismissed in part*, 859 F.3d 156 (2d Cir. 2017) (upholding the relevant portion of the lower court’s decision).

<sup>152</sup> *Johnson*, 140 F. Supp. 3d at 228.

<sup>153</sup> *Id.* at 228-29.

<sup>154</sup> *Troxel v. Granville*, 530 U.S. 57, 65 (2000).

<sup>155</sup> *Johnson*, 140 F. Supp. 3d at 229 (quoting *Mathews*, 424 U.S. at 333).

<sup>156</sup> *Johnson*, 859 F.3d at 168 (“We conclude that the district court’s treatment of Johnson’s due process claim is not within the scope of Perry’s notice of appeal, and we thus lack jurisdiction to review that decision.”).

child's school campus. This private interest is of the utmost gravity given the enormous importance that most parents place on their child's education. As noted in *Johnson*—which in turn supported its finding with *Troxel*—the right to set foot on a child's campus goes part and parcel with the right to share in a child's education.<sup>157</sup> A parent who cannot set foot on her, his, or their child's school grounds potentially cannot participate in school meetings, student performances, fundraising events, sporting activities, or even graduation. It is true that some limited access letters do permit even banned parents to attend these activities—but often they must still contact the school ahead of time to notify security of their presence. The incredible affront to a parent's dignity—in other words, the ability of a school to humiliate a parent—by requiring this process alone should make the high level of private interest apparent.

The public interest at stake—i.e. the school's interest in being able to maintain an orderly, safe campus—may also be relatively high. The school rightfully has to balance the interests of not just one child or parent but the interests of an entire community of children and parents. Just as a single student can make a learning environment challenging, a single parent can perhaps make a school setting unsafe or disruptive. However, notably, in some situations a parent may pose substantially more risk to the rest of the school than others: a parent who has demonstrated physical violence is a far cry from a parent who merely has expressed unpopular opinions. But even parents who demonstrate physical violence in a school are entitled to due process—just as students facing suspension, and individuals facing incarceration, receive Fifth Amendment protections as well.<sup>158</sup>

From a more nuanced, long-term perspective, the school's public interest might actually align with the parent's private interest. Many studies show that the children of parents who are more involved in their child's education often perform better in the classroom.<sup>159</sup> Studies also show that

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<sup>157</sup> *Johnson*, 140 F. Supp. 3d at 229 (“[I]t cannot now be doubted that the Due Process Clause of the Fourteenth Amendment protects the fundamental right of parents to make decisions concerning the care, custody, and control of their children.’ . . . Banning a parent from his child’s public school infringes upon the parent’s constitutional liberty interest in directing the education of his child.”) (quoting *Troxel*, 530 U.S. at 66).

<sup>158</sup> U.S. CONST. amend. V; STUDENT DISCIPLINE PROCEDURES, *supra* note 142, § III.

<sup>159</sup> See, e.g., BARRY RUTHERFORD ET AL., U.S. DEP’T OF EDUC., OFFICE OF EDUC. RESEARCH & IMPROVEMENT, PARENT AND COMMUNITY INVOLVEMENT IN EDUCATION 29-30 (1997), <https://perma.cc/59YJ-6E4L> (“[T]here are two facts that are ‘fairly well settled’ in the literature regarding the link between parent involvement and student achievement. First, students, including students from low [socio-economic status] whose parents are involved in their schools, do better in their academic subjects and are less likely to drop out than those students whose parents are less involved. Second, those schools where parents are well informed and highly involved are most likely to be effective schools.”) (citations omitted).

parents involved in their children's schools "spend more time working with their children at home and rate teachers higher,"<sup>160</sup> a positive outcome for parents and schools alike.

But the risk of erroneous deprivation should break any ties.<sup>161</sup> In other words: it is an enormous problem that the principal has apparent power to ban from school grounds both the parent who acts with violence, constituting, perhaps, a "proper deprivation" of a parent's right to set foot on campus, and the parent who merely suggests school policy changes, constituting the "erroneous deprivation" contemplated in *Mathews*. Moreover, determining the propriety of a deprivation based on a parent's alleged violent behavior must necessarily take into account the ways in which implicit racial bias influences perceptions of behavior, such that the conduct of a parent of color is deemed violent while the same conduct of a white parent is not deemed violent. While this discussion is beyond the scope of this article, these issues could be resolved, or at least raised, in a *Mathews*-style hearing.

The fact that the DOE currently allows principals to ban either type of parent without any type of accountability or oversight means that, without some form of hearing, these erroneous deprivations will continue.

The cost of a hearing, meanwhile, seems incalculably low. It would take as little as an hour-long meeting—between the principal and the parent, with a neutral arbiter presiding—to conduct the fact-finding necessary to get to the truth. The DOE already has an entire department, the Office of Safety and Youth Development ("OSYD"), devoted to approving superintendent's suspensions.<sup>162</sup> Five separate hearing offices in New York City adjudicate suspension cases—one for each borough, with a second hearing office in Brooklyn that also serves Staten Island.<sup>163</sup> Extending this same procedural mechanism through OSYD for parents who receive a limited access letter seems a logical and simple step. A similar process could easily be put in place for whenever a principal wishes to issue a limited access letter.

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<sup>160</sup> *Id.* at 30 (citations omitted).

<sup>161</sup> For a landmark case that illustrates the court's balancing of individual and public interest, see *Goldberg v. Kelly*, 397 U.S. 254, 266 (1970) ("Thus, the interest of the eligible recipient in uninterrupted receipt of public assistance, coupled with the State's interest that his payments not be erroneously terminated, clearly outweighs the State's competing concern to prevent any increase in its fiscal and administrative burdens.").

<sup>162</sup> See *Suspensions*, *supra* note 144 ("The chief executive officer of the DOE Office of Safety and Youth development (OSYD)/designee must approve [superintendent's] suspensions . . .").

<sup>163</sup> *Suspension Hearing Offices*, NYU LAW SUSPENSION REPRESENTATION PROJECT, <https://perma.cc/M6C2-3VKC> (last visited Apr. 29, 2019).

Again, discussion of DOE student suspension procedures as an analogue may shed light. Currently, whenever a student receives a superintendent's suspension, the regional superintendent sends a letter to the students' parents the same day the suspension is issued.<sup>164</sup> Then, the student's hearing must take place within five days of the suspension.<sup>165</sup> If the student is found not responsible for the conduct giving rise to the suspension, the student is immediately returned to the student's home classroom.<sup>166</sup> If the student is found responsible, the DOE may continue to suspend the student for a designated amount of a time.<sup>167</sup>

The DOE could introduce a similar process for parents who receive a limited access letter. For instance, the DOE could formally require the principal or superintendent to issue a limited access letter on the day in question. The DOE could then require OSYD to schedule a hearing to take place within five days of the letter. Based on the hearing, the DOE could then either uphold the limited access letter, retract it, or modify the length of the parent's "limited access" to campus.<sup>168</sup> Realistically, the DOE could almost certainly bootstrap limited access letter hearings into the same exact five hearing offices that currently hold suspension hearings. The procedure would be enormously similar.

The DOE has already made what perhaps most reasonable people would consider erroneous deprivations. To wit: Stephanie Thompson, the East Village mom banned for criticizing the superintendent and the principal; and Kaliris Salas-Ramirez and Jen Roesch, the CPE1 advocates banned for challenging policy at their children's school. These are the erroneous takings that the DOE must curtail through a pre-deprivation hearing.

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Courts in other circuits and states have also supported the assertion that limited access letters violate the Fifth Amendment and Fourteenth Amendment procedural due process rights. In a 2010 criminal case in Washington State—for which the ACLU filed an amicus brief—a parent

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<sup>164</sup> STUDENT DISCIPLINE PROCEDURES, *supra* note 142, § III.B.3(n).

<sup>165</sup> *Id.* § III.B.3(s).

<sup>166</sup> *Id.* § III.B.3(u)(2); *see also* ADVOCATES FOR CHILDREN, *supra* note 40, at 13 ("If the charges are dismissed, your child has the right to return to school immediately . . .").

<sup>167</sup> STUDENT DISCIPLINE PROCEDURES, *supra* note 142, § III.B.3(v) (describing dispositional options should the allegations be sustained); *see also* ADVOCATES FOR CHILDREN, *supra* note 40, at 13 ("If the charges are sustained, your child may be suspended for a particular length of time . . .").

<sup>168</sup> Based on the author's experience, a current major issue with limited access letters is that many (if not all) letters do not specify any length of time for which the parent ban is in effect. A hearing officer could create more parameters to an otherwise apparently indefinite suspension.

was banned from her son's elementary school campus "after she repeatedly asked pointed questions about curriculum, district policies, textbooks, and lesson plans at a 'Curriculum Night' event held for parents."<sup>169</sup> According to the ACLU, this parent was later "cited and criminally prosecuted for going back to the school twice—once to try to attend a parent-teacher conference and a book fair, and once to pick up her son from a science fair."<sup>170</sup> When the parent requested a hearing to challenge the ban, the school district refused.<sup>171</sup>

In that criminal case, *State v. Green*, the Court of Appeals of Washington discussed the school's failure to inform the parent, Ms. Green, of the right to appeal the trespass.<sup>172</sup> The court held that this failure of notice to the parent constituted a violation of her procedural due process rights.<sup>173</sup> Discussing *Mathews* yet again, the court elaborated—highlighting many of the same types of procedural deficiencies that plague the New York City Chancellor's Regulations:

Here, Green had the right to appeal under [the Revised Code of Washington] 28A.645.010. But, she was not informed of this right. The notice of trespass and other correspondence to Green restricting her right of access cite only to the criminal trespass statute. The notice of trespass instructed Green to direct any concerns about a "school-related issue" to the assistant superintendent. The letter amending the notice of trespass also permitted Green to contact [general counsel for the school district, Charles] Lind with any questions regarding the notice. Nowhere do these materials mention a right to appeal the restrictions in the notice of trespass to any school district official, the school board, or the court. The materials do not cite the regulations or statutes that provide the right to appeal. They identify no procedure or deadline. No witnesses for the State testified even to an oral notice of any right to appeal, let alone a procedure to appeal . . . . The bare right to a judicial appeal, without being informed of that right, was insufficient to protect Green from arbitrary action by the school district.<sup>174</sup>

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<sup>169</sup> Nancy Talner, *Appeals Court Supports Parent's Right to Be at School*, ACLU WASH. (Oct. 7, 2010), <https://perma.cc/LPN3-DHPY>.

<sup>170</sup> *Id.*

<sup>171</sup> *Id.*

<sup>172</sup> *State v. Green*, 239 P.3d 1130, 1137 (Wash. Ct. App. 2010).

<sup>173</sup> *Id.* at 1137-38.

<sup>174</sup> *Id.* at 1137.



Later in the decision, the court explicitly invoked the *Mathews* test. It found that the school district violated the parent's procedural due process rights due to the risk of erroneous deprivation: "We hold that under the *Mathews* test[,] without notice of procedures to challenge the notice of trespass, no protection existed to prevent the erroneous deprivation of Green's right to be at her child's school."<sup>175</sup>

A similar set of facts resulted in a similar decision in California. In a May 2018 case—in which the Mexican American Legal Defense and Education Fund (MALDEF) filed an amicus brief—the Eastern District of California found that, under state law, a parent cannot be banned indefinitely without a right to a hearing.<sup>176</sup> The case began when Claudia Macias, mother of a fourth-grade student, asked that her son's principal re-assign him to a different class.<sup>177</sup> Macias made this request because her son's teacher triggered his anxiety.<sup>178</sup> When Macias and her husband attempted to visit the classroom, the principal refused to let them do so.<sup>179</sup> The principal called the school's resource officer, a Sheriff's deputy, and indefinitely banned Macias from the school.<sup>180</sup> The principal said that Macias "screamed at and harassed two teachers," an allegation Macias denied in her amended complaint.<sup>181</sup> The deputy then threatened to arrest Macias if she ever returned to the school except for an emergency.<sup>182</sup> Macias raised both First Amendment retaliation for protected speech and deprivation of procedural due process arguments.<sup>183</sup>

With respect to the free speech arguments, Senior District Judge Ishii noted that, while California does allow school officials to restrict parental access to campus in certain circumstances, this restriction requires a finding that the individual "willfully disrupted the orderly operation" of a

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<sup>175</sup> *Id.* at 1138.

<sup>176</sup> See *Macias v. Filippini*, No. 1:17-CV-1251 AWI EPG, 2018 WL 2264243, at \*12 (E.D. Cal. May 17, 2018).

<sup>177</sup> *Id.* at \*1.

<sup>178</sup> *Id.*

<sup>179</sup> *Id.*

<sup>180</sup> *California School Officials May Not Indefinitely Ban Parent from Child's School as Retaliation for Free Speech or Without Opportunity to Contest*, MEXICAN AMERICAN LEGAL DEF. AND EDUC. FUND (May 18, 2018), <https://perma.cc/EWE4-7N9G> [hereinafter *California School Officials May Not Indefinitely Ban Parent*].

<sup>181</sup> *Id.*; *Macias*, 2018 WL 2264243, at \*5 ("While Plaintiff's complaint does reference Principal Filippini's perspective that the teachers were being harassed by Plaintiff . . . Plaintiff describes this as a false accusation.") (citation omitted).

<sup>182</sup> *California School Officials May Not Indefinitely Ban Parent*, *supra* note 180; *Macias*, 2018 WL 2264243, at \*1 ("Sheriff's Deputy Brian Miller, the school resource officer, told Plaintiff that Principal Filippini 'had the authority to ban her from the school,' and said 'he would arrest her if she ever returned to the school.'").

<sup>183</sup> *Macias*, 2018 WL 2264243, at \*3-10.

school campus.<sup>184</sup> Because the defendant school had moved to dismiss, the court was required to view this motion in the light most favorable to Macias, the nonmoving party.<sup>185</sup> The court found that there was “no basis to conclude that Plaintiff engaged in improper conduct” and denied the school officials’ motions to dismiss.<sup>186</sup> Importantly, Judge Ishii noted that “imposing [an indefinite] ban indicates a retaliatory motive.”<sup>187</sup>

With respect to the procedural due process grounds, the court discussed whether Macias had a right under state law to be present on campus.<sup>188</sup> The court looked to Section 51101 of California’s Education Code<sup>189</sup> and Section 626.4 of the California Penal Code<sup>190</sup> to see whether the laws “significantly limit[ed]” the school’s discretion to ban a parent from campus.<sup>191</sup> Based on these statutory provisions, the court concluded that Macias’s right to be on the grounds of her child’s school was a type of property interest that required procedural due process.<sup>192</sup> As such, Judge Ishii then concluded that this interest gave rise to requirement for a hearing, which never took place.<sup>193</sup> These laws—if enforced—ensure that principals in California cannot issue the type of indefinite limited access letters that school leaders in the DOE and elsewhere in New York have used without providing a hearing.

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<sup>184</sup> *Id.* at \*11 (citing CAL. PENAL CODE § 626.4).

<sup>185</sup> *Id.* at \*2 (citing *Faulkner v. ADT Security Services*, 706 F.3d 1017, 1019 (9th Cir. 2013)).

<sup>186</sup> *Id.* at \*5, 12.

<sup>187</sup> *Id.* at \*1.

<sup>188</sup> *Macias*, 2018 WL 2264243, at \*6-8.

<sup>189</sup> *Id.* at \*7-8 (“Section 51101 states, in relevant part: ‘[P]arents and guardians of pupils enrolled in public schools have the right and should have the opportunity . . . to be informed by the school, and to participate in the education of their children, as follows: (1) Within a reasonable period of time following making the request, to observe the classroom or classrooms in which their child is enrolled; (2) Within a reasonable time of their request, to meet with their child’s teacher or teachers and the principal of the school in which their child is enrolled; . . . (7) To have a school environment for their child that is safe and supportive of learning . . . (9) To be informed of their child’s progress in school; . . . (12) To be informed in advance about school rules, including disciplinary rules and procedures in accordance with Section 48980, attendance policies, dress codes, and procedures for visiting the school.’”).

<sup>190</sup> *Id.* at \*7 (“[The Section] from which a school official derives the power to remove a person from school grounds for disruptive conduct, specifies that ‘[i]n no case shall consent [to remain on campus] be withdrawn for longer than 14 days from the date upon which consent was initially withdrawn.’”).

<sup>191</sup> *Id.* at \*6-8.

<sup>192</sup> *Id.* at \*8 (“Plaintiff therefore has alleged a protected property interest on which to base her claim for a due process violation.”).

<sup>193</sup> *Macias*, 2018 WL 2264243, at \*8, 11.

Other circuits and courts have come down another way when parents have been accused of disrupting a school environment.<sup>194</sup> In a Michigan case from 2002, for instance, a father of an elementary school student was accused of masturbating in a car in the school's parking lot.<sup>195</sup> The father, Alexander Mejia, was arrested and charged with indecent exposure.<sup>196</sup> He was ultimately acquitted, but, nevertheless, the superintendent conducted his own investigation, and, based on this investigation, wrote Mejia a letter banning him from all school activities and from setting foot on the school property.<sup>197</sup> Mr. Mejia's wife, Patricia Mejia, asked—personally and by going through an attorney—that the superintendent retract the letter, but he would not do so, giving rise to the case.<sup>198</sup> The school subsequently filed a motion for summary judgment.<sup>199</sup>

The Michigan court in this case relied on *Troxel v. Granville*, the same Supreme Court child custody case that the *Johnson* court relied on in Connecticut.<sup>200</sup> After discussing several Sixth Circuit cases, the *Mejia* court noted that the Mejias based their argument in part on the *Troxel* “right to direct and control the education of their child.”<sup>201</sup> However, unlike in *Johnson*, the *Mejia* court disagreed with this take on *Troxel*:

This argument . . . is based upon a strained reading of *Troxel*. While *Troxel* does mention that parents have the right to direct and control the education of their children (albeit the case does not, itself, involve the education of a child), nothing in that decision suggests that it includes the right to go onto school property, even if doing so is necessary to participate in the child's education.<sup>202</sup>

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<sup>194</sup> Note also that parents seeking to litigate claims must choose a theory of liability carefully. In a case cited by the *Macias* court, a parent was banned from a school after an altercation in which the parent allegedly yelled obscenities. *Camfield v. Bd. of Trustees of Redondo Beach Unified Sch. Dist.*, No. 2:16-cv-02367-ODW (FFM), 2016 WL 7046594, at \*2 (C.D. Cal. Dec. 2, 2016). However, rather than pursuing a claim based on Fifth and Fourteenth Amendment procedural due process grounds, the parent attempted to argue that California Education Code § 51101 gave rise to tort liability. *Id.* at \*4-5. This effort was unsuccessful, and the court dismissed this claim and the parents' other unrelated claims. *Id.* at \*6.

<sup>195</sup> *Mejia v. Holt Pub. Sch.*, No. 5:01-CV-116, 2002 WL 1492205, at \*1 (W.D. Mich. Mar. 12, 2002).

<sup>196</sup> *Id.*

<sup>197</sup> *Id.*

<sup>198</sup> *Id.*

<sup>199</sup> *Id.*

<sup>200</sup> *Mejia*, 2002 WL 1492205, at \*1 at \*5; *Johnson v. Perry*, 140 F. Supp. 3d. 222, 228-29 (D. Conn. 2015).

<sup>201</sup> *Id.* at \*5 (citation omitted).

<sup>202</sup> *Id.*

But times have changed since *Mejia* was decided seventeen years ago. Since then, a wealth of scholarship has shed light on the criminalization of youth in schools.<sup>203</sup> Communities have become far more aware of the school-to-prison pipeline,<sup>204</sup> and this change in attitudes has led to school administrators and courts questioning zero-tolerance policies.<sup>205</sup> For cases coming seventeen years after *Mejia*, then, courts may find it less tenuous to read *Troxel* as granting parents a right to be on campus.

The *Mejia* court also relies on the blanket assertion that the Supreme Court generally uses “restraint in delineating the scope of parents’ fundamental rights with respect to education.”<sup>206</sup> But this assertion does not pass muster. For decades, the Supreme Court has many times taken an aggressive posture in expanding the rights of parents with respect to education. In the 1923 case of *Meyer v. Nebraska*, for instance, the Court struck down a Nebraska statute that prohibited the instruction of any language other than English in schools.<sup>207</sup> The Court made specific reference to the same parental “right of control” over a child’s education advanced in *Troxel*.<sup>208</sup> In the 1925 case of *Pierce v. Society of Sisters*, the Supreme Court overruled an Oregon statute forbidding private schools.<sup>209</sup> Drawing specifically on the logic of *Meyer v. Nebraska*, the Court found that the Oregon law “unreasonably interferes with the liberty of parents and guardians to direct the upbringing and education of children under their control.”<sup>210</sup> Years later, the Supreme Court continued this logic in *Wisconsin v. Yoder*. In this case from 1972, the Supreme Court struck down a Wisconsin statute forcing children to remain in school beyond eighth grade, due to religious objections brought by Amish parents.<sup>211</sup>

As of 2019, the Supreme Court has continued to grant very broad power to parents in an educational context, contrary to the *Mejia* court’s assertion. In 2017, for instance, the Supreme Court decided *Endrew F. v. Douglas County*. This case greatly expanded parents’ rights with respect to their children’s education because it confirmed the right to public reimbursement for private school tuition—in other words, the right to opt

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<sup>203</sup> See, e.g., Anne Gregory et al., *The Achievement Gap and the Discipline Gap: Two Sides of the Same Coin?* 39 EDUC. RESEARCHER 59 (2010); Nancy A. Heitzeg, *Education or Incarceration: Zero Tolerance Policies and the School to Prison Pipeline*, FORUM ON PUBLIC POLICY (2009).

<sup>204</sup> Harold Jordan, *As Awareness of the School-to-Prison Pipeline Rises, Some Schools Rethink the Role of Police* (Mar. 20, 2015, 1:00 PM), <https://perma.cc/GF66-9TLJ>.

<sup>205</sup> See Heitzeg, *supra* note 203, at 15-16.

<sup>206</sup> *Mejia*, 2002 WL 1492205, at \*6.

<sup>207</sup> *Meyer v. Nebraska*, 262 U.S. 390, 403 (1923).

<sup>208</sup> *Id.* at 400.

<sup>209</sup> *Pierce v. Soc’y of Sisters*, 268 U.S. 510 (1925).

<sup>210</sup> *Id.* at 534-35.

<sup>211</sup> *Wisconsin v. Yoder*, 406 U.S. 205, 235-36 (1972).

out of the public education system entirely, at taxpayer expense—when a child is not making appropriate progress in line with her, his, or their abilities.<sup>212</sup> Thus, the Supreme Court can hardly be said to exercise “restraint” when it comes to a parent’s rights over their child’s education.<sup>213</sup>

The *Mejia* court also observed that the *Mejias* did not point to any cases which would establish a fundamental right to being present on their child’s school property.<sup>214</sup> But this observation is also out of date. *Johnson*, *State v. Green*, and *Macias v. Filippini* all now seem to stand for the proposition that parents have a fundamental right to be present on their child’s campus.<sup>215</sup> Without going too far “into the weeds,” the *Mejia* court’s logic seems meager or insufficient at best: the cases it cites are distinguishable from the conduct alleged in the case.<sup>216</sup> Furthermore, the analysis of *Mejia* focused largely on substantive due process—not the procedural due process that *Johnson* has focused on since.<sup>217</sup>

The case law from the Second Circuit and beyond overwhelmingly support a New York City parent’s right to be on their child’s school grounds. The one exception, *Mejia*, is out of date and, most importantly, decided by the Sixth Circuit—which includes Kentucky, Michigan, Ohio, and Tennessee—so it does not have binding or precedential effect on the Second Circuit. Since at least the 1920s, contrary to *Mejia*, the Supreme Court has regularly expanded the rights of parents to control or direct the education of their children. Other cases, such as *Johnson* and *Macias*, have argued forcefully for a parent’s right to a pre-deprivation hearing before being excluded on a long-term basis from campus.<sup>218</sup>

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<sup>212</sup> *Andrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist.* RE-1, 137 S. Ct. 988, 999-1002 (2017).

<sup>213</sup> *Contra Mejia v. Holt Pub. Sch.*, No. 5:01-CV-116, 2002 WL 1492205, at \*6 (W.D. Mich. Mar. 12, 2002).

<sup>214</sup> *Id.* at \*5-6.

<sup>215</sup> See discussion *supra* pp. 359-67.

<sup>216</sup> See *Mejia*, 2002 WL 1492205, at \*4. In one case cited by *Mejia*, for instance—*Lovern v. Edwards*, 190 F.3d 648 (4th Cir. 1999)—a court dismissed somewhat similar claims for lack of subject matter jurisdiction. In *Lovern*, a parent was banned from a school campus after a dispute over his son’s failure to be selected for the varsity basketball team. However, the *Lovern* court seemed distracted by what it perceived as the frivolity of the proceedings; it turned out the parent ran a private litigation company and sought more to advance his business interests rather than his son’s basketball career. The *Mejia* court also cited *Henley v. Octorara Area School District*, 701 F. Supp. 545 (E.D. Pa. 1988), but this case involved an individual who was not a parent getting banned from school property. Another case cited by *Mejia*, *Swanson v. Guthrie Indep. Sch. Dist.*, 135 F.3d 694 (10th Cir. 1998), involved a homeschooling parent concerned about curriculum, facts not directly applicable to the limited access letter context.

<sup>217</sup> Compare *Mejia*, 2002 WL 1492205, at \*2-7, with *Johnson v. Perry*, 859 F.3d 156, 166-68 (2d Cir. 2017).

<sup>218</sup> See *Johnson v. Perry*, 140 F. Supp. 3d 222 (D. Conn. 2015); *Macias v. Filippini*, No. 1:17-CV-1251 AWI EPG, 2018 WL 2264243 (E.D. Cal. May 17, 2018).

Thus, the conclusion is stark: the DOE's limited access letters—to the extent that they ban or restrict a parent's presence on campus without a pre-deprivation hearing, rather than merely enforce safety rules already in effect for all parents—are illegal.

*B. Limited Access Letters Are Arbitrary and Capricious*

While procedural due process may provide the primary and most immediate theory of liability to challenge limited access letters, the “arbitrary and capricious” standard may provide an alternative attack on the practice.

Under the federal Administrative Procedure Act, a court may overturn the findings of a federal agency if the findings are found to be “arbitrary and capricious.”<sup>219</sup> States have adopted their own versions of the Administrative Procedure Act to create a similar standard of review for state agency decisions. In New York, litigants may initiate an Article 78 proceeding—referring to Article 78 of New York's Civil Practice Law and Rules—to challenge New York state agency decisions.<sup>220</sup> New York State has interpreted “arbitrary and capricious” to mean “without sound basis and reason and generally taken without regard to the facts.”<sup>221</sup>

A recent case involving an appeal of a parent ban similar to a limited access letter may shed light on a path toward arguing that these letters are arbitrary and capricious.<sup>222</sup> In *Lujan v. Carranza*, a New York City man was banned from coming within 1,000 feet of the grounds of his son's elementary school due to his 1988 sex conviction of an offense against a middle school-aged girl.<sup>223</sup> The principal issued the ban nearly twenty years after Mr. Lujan, the “sole caretaker” of his son, had been released from prison and discharged from parole.<sup>224</sup> Lujan attempted to have the ban overturned by writing to the DOE; however, the DOE upheld the ban, referencing its policy that prohibits people convicted of sex offenses against minors and designated as having “the highest risk of recidivism”

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<sup>219</sup> JARED P. COLE, CONG. RESEARCH SERV., R44699, AN INTRODUCTION TO JUDICIAL REVIEW OF FEDERAL AGENCY ACTION 22 (2016), <https://perma.cc/D84U-RT9X>.

<sup>220</sup> N.Y. C.P.L.R. § 7803 (McKinney 2019) (“The only questions that may be raised in a proceeding under this article are: . . . whether a determination was made in violation of lawful procedure, was affected by an error of law or was arbitrary and capricious or an abuse of discretion . . .”).

<sup>221</sup> See *Lujan v. Carranza*, 63 Misc. 3d 235, 239 (N.Y. Sup. Ct. 2019) (citations omitted).

<sup>222</sup> I consider a “limited access letter” to refer to when a parent receives a letter from a principal restricting access in response to a recent incident that allegedly took place on school grounds. By contrast, the letter in *Lujan* comes in response to a sex offense—which involves its own statutory reporting and restriction scheme—from many years earlier.

<sup>223</sup> *Lujan*, 63 Misc. 3d at 236.

<sup>224</sup> *Id.*

from entering school grounds.<sup>225</sup> The letter also advised that Lujan “could contact school personnel regarding his son’s progress, and could try to make arrangements with the principal if he wanted to attend a specific event with supervision.”<sup>226</sup> Lujan appealed to the Commissioner of Education at NYSED, and later to the Supreme Court of Albany County under an Article 78 claim.<sup>227</sup> In the meantime, Lujan’s son graduated from the elementary school and moved on to middle school.<sup>228</sup> Lujan received a letter from the middle school principal imposing what the court characterized as “somewhat more lenient” restrictions compared to the elementary school: this principal allowed him to meet with school staff and attend events if he let them know ahead of time and a school safety agent (“SSA”) accompanied him.<sup>229</sup>

When Lujan ultimately appealed in Albany County Supreme Court, that court found that the DOE’s refusal to grant him full access to his son’s school was not arbitrary and capricious.<sup>230</sup> The court seems to have based its decision on two factors. First, the court noted that the ban on Lujan’s entry into the middle school was not a “blanket prohibition.”<sup>231</sup> Because Lujan could still set foot on school grounds after giving notice and with SSA accompaniment, the court found that Lujan still had sufficient access to the school.<sup>232</sup> Second, the court noted that Lujan’s sex offender status and underlying conviction did make the school’s treatment of him rational, despite the many years that had passed since the crime.<sup>233</sup>

While Lujan was unsuccessful in demonstrating that his case involved arbitrary and capricious decision-making, applying the same standard to many of the cases discussed in this piece would likely yield the opposite conclusion. For instance, Natasha Battle’s ban from school property came in response to her use of the word “damn” in front of school children.<sup>234</sup> To adopt the *Lujan* analysis: to ban a parent from stepping on school grounds due to profanity is “without sound basis and reason.”<sup>235</sup>

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<sup>225</sup> *Id.* at 236-37.

<sup>226</sup> *Id.*

<sup>227</sup> *Id.* at 237, 239.

<sup>228</sup> *Lujan*, 63 Misc. 3d at 237.

<sup>229</sup> *Id.* at 238.

<sup>230</sup> *Id.* at 243. Lujan also appealed the NYSED Commissioner’s decision that dismissed his administrative appeal as moot because his son was no longer at the elementary school that sent the letter upon which the claim was based. *Id.* at 237-39. The court held that the Commissioner’s decision was not arbitrary and capricious. *Id.* at 243.

<sup>231</sup> *Id.* at 242.

<sup>232</sup> *Id.* at 238, 242.

<sup>233</sup> *Lujan*, 63 Misc. 3d at 242-43.

<sup>234</sup> Chapman & Smith, *supra* note 1.

<sup>235</sup> *See Lujan*, 63 Misc. 3d at 239.

Battle did not exhibit any threat toward students or staff.<sup>236</sup> Even Success' position—that she was scaring students and school staff by yelling out profane words—does not seem to indicate an actual threat of violence or a crime. The profanity she allegedly uttered came in direct response to a predictable trigger: the school's failure to open its doors for families and children standing outside in the rain.<sup>237</sup> Continuing the *Lujan* inquiry, Success banned Battle “without regard to the facts.” The only relevant facts, as stated, were that Battle used the word “damn” and was forced to stand outside in the rain with her children.

Parents and practitioners who feel that a school has issued any type of ban “without sound basis and reason” and/or “without regard to the facts,” then, may wish to argue that the ban is arbitrary and capricious. While unproven, perhaps this approach might yield strategic rewards as well. “Arbitrary and capricious” claims invoke a more “low stakes” standard inherent in state law.<sup>238</sup> Procedural due process claims, meanwhile, invoke “higher stakes” principles of federal constitutional law.<sup>239</sup> A state court, then, may feel more comfortable overruling a school district's limited access letter by simply saying the decision was arbitrary and capricious, rather than wading into the murky and deeper waters of procedural due process. Strategically, however, the standard for “arbitrary and capricious” may also be a challenging one to meet.<sup>240</sup>

C. *Limited Access Letters Impose a Disparate Impact on Parents of Color and Parents of Students with Disabilities*

Finally, litigants could almost certainly argue disparate impact in theory. In other words, litigants could argue that limited access letters impose a disparate impact on a constitutionally-protected class—people of color—and on parents of students with disabilities.

Unfortunately, this theory of liability would likely not be successful in the current judicial landscape. In 2001, the Supreme Court decided the case of *Alexander v. Sandoval*.<sup>241</sup> This case found that Title VI of the Civil Rights Act, which prohibits discrimination on the basis of “race, color, or

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<sup>236</sup> See Chapman & Smith, *supra* note 1.

<sup>237</sup> *Id.*

<sup>238</sup> See, e.g., Lesley Daunt, *State vs. Federal Law: Who Really Holds the Trump Card?*, HUFFPOST (Jan. 28, 2014, 4:13 PM), <https://perma.cc/KUS8-T78D>.

<sup>239</sup> *Id.*

<sup>240</sup> See, e.g., Louis J. Virelli, *Deconstructing Arbitrary and Capricious Review*, 92 N.C. L. REV. 721, 728 (2014) (describing the narrow scope of arbitrary and capricious review).

<sup>241</sup> *Alexander v. Sandoval*, 532 U.S. 275 (2001).



national origin,”<sup>242</sup> did not allow for a private right of action under a theory of disparate impact.<sup>243</sup> As a result, DOE parents would likely not be able to seek judicial relief unless *Alexander v. Sandoval* were overturned.<sup>244</sup>

### III. SOLUTIONS FOR NEW YORK CITY: LESSONS FROM LOS ANGELES

In Los Angeles, limited access letters—or “disruptive person letters,” as they are known there—once mirrored New York City’s practices.<sup>245</sup> The Los Angeles Unified School District (“LAUSD”) recently reformed its schools’ use of these letters in banning parents from campus.<sup>246</sup> Although New York City can learn from LAUSD’s reforms, the most appropriate action is still to stop the limited access letter practice.

#### A. *Abolish Limited Access Letters Altogether*

For nearly every reason imaginable, New York City—and the rest of the country—should end the practice of limited access letters, full stop. As discussed above, they are illegal. Depriving parents of their protected liberty interest in being on a school campus without a pre-deprivation hearing violates procedural due process requirements under the Fifth and Fourteenth Amendments. Even if a process were introduced to attempt to satisfy constitutional requirements, parents should not be excluded from campus—period. These types of letters have a disproportionate effect on parents of color. The letters can cause shame and humiliation for recipients.<sup>247</sup> And they do not resolve the more serious underlying issues of establishing mutual trust between schools and parent communities.

There are other ways to engage with parents productively without resorting to limited access letters. Lily Gonzalez is an LAUSD graduate

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<sup>242</sup> *Id.* at 278.

<sup>243</sup> *Id.* at 293 (“Neither as originally enacted nor as later amended does Title VI display an intent to create a freestanding private right of action to enforce regulations promulgated [to prohibit discrimination]. We therefore hold that no such right of action exists.”).

<sup>244</sup> See Tanya L. Miller, *Alexander v. Sandoval and the Incredible Disappearing Cause of Action*, 51 CATH. U. L. REV. 1393, 1419-20 (2002) (discussing the ramifications of the *Sandoval* ruling in the education context where it is difficult to prove intentional discrimination, but there is an undeniable disproportionate impact).

<sup>245</sup> See Sonali Kohli, *L.A. Unified Creates Appeal Process for Parents Who Are Kept off School Campuses*, L.A. TIMES (Nov. 21, 2016, 12:35 PM), <https://perma.cc/3QC4-DP2Q>.

<sup>246</sup> *Id.*

<sup>247</sup> Based on the author’s conversations with practitioners and clients. See also Mike Szymanski, *LAUSD Softens ‘Disruptive Person’ Letters, but Parents Are Still Angry*, LA SCH. REP. (Nov. 22, 2016), <https://perma.cc/2TTT-JK3T>.

and parent of a student at a California charter school.<sup>248</sup> She recently wrote a moving story about her own experience:

Recently I sent a strongly worded email to my daughter's teachers, she was working on a group project and didn't receive the grade we were hoping for, she was also not presented with the grading rubric right away letting her know what she did wrong and areas for improvement. This was a project that I saw my little scholar working avidly on, and I was beyond upset when my daughter received a low score. The hoop earrings were about to come off. This alone could have been reason enough to be labeled as a disruptive parent had she been at LAUSD. Instead of receiving one of these letters, her teachers scheduled a meeting with me to take place a few days later. This also gave me the time to cool off. We met, they explained the rubric and why she received the grade that she did. The reason rubrics weren't handed out on the spot was because the grade was cumulative and other components for assessment were factored in. We resolved the situation and worked together. Had I received letter telling me that I was "disruptive," I would have only been further agitated, and the last thing I would have wanted was to work together with my child's educators. It was a learning experience for us all.<sup>249</sup>

Gonzalez's story may illustrate the type of response that DOE principals and educators could take with "difficult" parents. The Parent Organization Network ("PON"), a collaborative organization whose mission is to "connect, empower, and mobilize parents and parent organizations" in the Los Angeles area,<sup>250</sup> suggests "provid[ing] training to any staff member that interacts with parents on customer service, conflict resolution, and de-escalation techniques."<sup>251</sup> Given the plethora of biases that school staff may unconsciously or consciously harbor toward certain parents, de-escalation provides an essential tool for staff to check in with themselves and act responsively instead of reactively.

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<sup>248</sup> Lily Gonzalez, *Parent Engagement Gone Wrong: Parents Beware, You Can Get a "Disruptive Parent" Accusation in LAUSD*, LA COMADRE (June 2016), <https://perma.cc/64DG-AWSG>.

<sup>249</sup> *Id.*

<sup>250</sup> *About Us*, PARENT ORG. NETWORK, <https://perma.cc/NV96-ZHHU> (last visited May 2, 2019).

<sup>251</sup> PARENT ORG. NETWORK, *ISSUANCE OF 'DISRUPTIVE PERSON LETTERS' TO LAUSD PARENTS: MODIFYING THE SYSTEM TO MAINTAIN SCHOOL SAFETY AND IMPROVE PARENT RELATIONS* 35 (2016), <https://perma.cc/GP5V-ZPU7> [hereinafter PARENT ORG. NETWORK REPORT].

In a similar vein, schools can take affirmative steps to open up the conversation about their policies and expectations of parents. “Providing parents with a booklet of rights to review on their own is not enough,”<sup>252</sup> PON’s 2016 report reads. “Principals need to review the rules most frequently violated with parents at ‘Back to School Night’ events.”<sup>253</sup> The group also recommends “formal orientations . . . with opportunities for parents and staff to dialogue about rights and responsibilities, school rules and procedures . . . and how to navigate the school and district to seek resources and resolve problems at school[,]” as well as training for parents on how to observe their child’s classroom without violating rules and policies.<sup>254</sup>

“Maintaining the safety of students while building stronger relationships with their parents are not mutually exclusive concepts. Both are achievable if schools truly reframe the role of parents as true partners.”<sup>255</sup> Even though LAUSD has made reforms, parents and advocates there still see the effects of the letters—parents are still excluded from participating in their children’s education.<sup>256</sup> Outright abolition of limited access letters, then, is by far the preferred solution. In the alternative, the reforms discussed below would make the practice more palatable for DOE parents. As we work towards abolition of limited access letters altogether, the following steps should be taken to improve the practice as it exists.

#### *B. Restrict the Reach of Limited Access Letters*

Under the new LAUSD policy, the ban cannot be indefinite; letters may only ban a parent for up to a year.<sup>257</sup> Significantly, the bulletin also states that a parent or other recipient of the letter may not be banned outright from campus: “[t]he letter does not preclude individuals from visiting the school or attending school activities, but merely requires calling the principal ahead of time to schedule an appointment.”<sup>258</sup> The DOE should adopt this policy as well, restricting limited access letters to a maximum duration of one year and ensuring parents may still participate fully in school events.

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<sup>252</sup> *Id.*

<sup>253</sup> *Id.*

<sup>254</sup> *Id.* at 36.

<sup>255</sup> *Id.* at 37.

<sup>256</sup> See Szymanski, *supra* note 247.

<sup>257</sup> Disruptive Person Letter Policy Bulletin, BUL-6826.0 (L.A. Unified Sch. Dist., Feb. 21, 2017), <https://perma.cc/FD4A-CUDQ>.

<sup>258</sup> *Id.*

C. *Make Data Public*

In Los Angeles, unlike in New York, the public has been able to learn more about who is receiving these letters, who is issuing them, and why. The findings on schools issuing these letters have been upsetting, but, from a policy perspective, they provide valuable information. PON filed an information request regarding the LAUSD.<sup>259</sup> In response, the group was permitted to analyze 476 disruptive person letters issued between 2002 and 2016.<sup>260</sup> PON analyzed each letter and compiled a database charting “school year, local district, school grade-level configuration, school type, principal, recipient(s), type and frequency of offense, and number of warnings and letters given to recipients.”<sup>261</sup> Among other findings, the group learned the following:

- Seventy percent of disruptive person letters were issued by elementary schools.<sup>262</sup>
- Approximately seventy percent of those receiving a letter were female.<sup>263</sup>
- A small number of principals accounted for a disproportionate number of letters: About one third of all letters issued were issued by a block of eleven percent of all principals giving out these letters.<sup>264</sup>
- During 2015-2016, 60.5% of all principals in LAUSD were women, but this group of principals constituted 68% of the principals who issued one or more disruptive person letters.<sup>265</sup>
- Eighty-two percent of letters, or 389 in total, were issued due to “verbal behaviors.”<sup>266</sup> Specific examples of verbal behavior that resulted in a disruptive person letter included: “being irate, raising the voice, yelling, using the wrong tone of voice, using

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<sup>259</sup> PARENT ORG. NETWORK REPORT, *supra* note 251, at 8.

<sup>260</sup> *Id.*; see also Kohli, *supra* note 245 (clarifying that this 476 figure is not the total number of disruptive person letters that were sent during the years in question). In fact, 304 letters were issued in 2015 alone. Szymanski, *supra* note 247. Also note that “disruptive person letters” were formerly known as “disruptive parent letters,” the change reflecting that anyone setting foot on campus could receive a letter. *Id.*

<sup>261</sup> PARENT ORG. NETWORK REPORT, *supra* note 251, at 8.

<sup>262</sup> *Id.* at 13.

<sup>263</sup> *Id.* at 16.

<sup>264</sup> *Id.* at 13.

<sup>265</sup> *Id.* at 12.

<sup>266</sup> PARENT ORG. NETWORK REPORT, *supra* note 251, at 17.

profanity, being argumentative, being disrespectful, saying negative things about the school, staff, or parents to others, or making general threats.”<sup>267</sup>

- The other top reasons principals issued letters were due to alleged violation of school policies,<sup>268</sup> threats,<sup>269</sup> and parents approaching students.<sup>270</sup>
- Prior warning was only mentioned in fourteen percent of the letters.<sup>271</sup>
- Ninety-nine percent of the letters restricted the recipient’s access to the campus.<sup>272</sup>
- Ninety-seven percent of the letters restricted access for an indefinite duration.<sup>273</sup>
- None of the 476 letters analyzed “provided instructions on how to appeal the letter or how a parent might work with the school administrator to regain normal access to campus.”<sup>274</sup>

PON also conducted qualitative interviews with a small number of parents who received letters.<sup>275</sup> Five out of six of the individuals interviewed said that they suspected the real reason they were banned from campus was “because they had been vocal or persistent in challenging

<sup>267</sup> *Id.*

<sup>268</sup> *Id.* at 18. Thirty-five percent of letters, or 168 in total, were issued due to “[v]iolating school or district policy or procedures.” *Id.* Some specific examples of violating policy or procedures that resulted in a disruptive person letter included: violating the visitor’s policy; failing to leave campus when requested; talking to others during classroom observation; and violating court orders. *Id.*

<sup>269</sup> *Id.* at 20. Twenty-five percent of letters, or 121 in total, were issued due to “[t]hreats.” *Id.* The report stated that they were “unable to assess from the letters whether a specific verbal threat . . . was credible.” *Id.* at 21.

<sup>270</sup> *Id.* at 19. Eighteen percent of letters, or 85 in total, were issued due to “[p]arents approaching students.” *Id.* These were issued in “situations where parents approached children other than their own directly to talk to them, touched their arm or shoulder to re-direct them, reprimanded or confronted them, threatened them, or physically struck them.” *Id.*

<sup>271</sup> *Issuance of ‘Disruptive Person Letters’ to LAUSD Parents: Modifying the System to Maintain School Safety and Improve Parent Relations*, PARENT ORG. NETWORK (Oct. 26, 2016), <https://perma.cc/7LMM-5MFM>. Note that this source is a PowerPoint presentation made in conjunction with (and utilizing much of the same information from) the report cited in PARENT ORG. NETWORK REPORT, *supra* note 251. The report notes that “it can be deduced that documenting warnings is not a requirement and therefore it is not systematically included in the letters.” PARENT ORG. NETWORK REPORT, *supra* note 251, at 25.

<sup>272</sup> PARENT ORG. NETWORK REPORT, *supra* note 251, at 26.

<sup>273</sup> *Id.*

<sup>274</sup> *Id.*

<sup>275</sup> *Id.* at 9.

policies being enforced.”<sup>276</sup> All six parents took action upon receiving the letter, from attempting to meet with the school principal or asking that the principal’s supervisor or a district official review the letter.<sup>277</sup> In the interviews, however, parents described the outcomes of their actions, none of which was that the letter was rescinded.<sup>278</sup> Parents interviewed reported “feeling sad, angry, frustrated, powerless, desperate, . . . ultimately devastated . . . [and that] there was ‘no way out’ to get the principal’s decision reviewed or overturned.”<sup>279</sup>

This is the type of qualitative and quantitative data that the DOE needs to generate. In fact, as of early 2019, the New York City Council has proposed legislation before it that would make this data a reality.<sup>280</sup> In March 2018, City Council member Ritchie Torres introduced a bill designed to require the DOE to report information and trends regarding limited access letters.<sup>281</sup> The bill would require the DOE to report annually on the number of limited access letters issued to parents, with data disaggregated by student race, student special education status, and other categories.<sup>282</sup> However, as of mid-2019, the City Council’s Committee on Education has control of the bill, and it does not appear to have made any movement since its introduction in March 2018.<sup>283</sup>

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<sup>276</sup> *Id.* at 27. Examples parents gave in the interviews included challenging the school’s policy that “classroom visitations were limited to 20 minutes, in violation of District policy and state law . . . [and] flagging to [the] principal and district officials that their child’s teacher was giving contradictory grades for different tests and assessments.” *Id.*

<sup>277</sup> PARENT ORG. NETWORK REPORT, *supra* note 251, at 28.

<sup>278</sup> *Id.* The report included a strong example of the result of one parent’s action: “One parent recalled appealing to the principal’s director for intervention but instead being told, ‘When it comes to things like this, the District backs the principal 100 percent.’” *Id.*

<sup>279</sup> *Id.* at 29.

<sup>280</sup> N.Y.C. Council Int. No. 670 (2018), <https://perma.cc/V8ZZ-2K4M>.

<sup>281</sup> *Id.*; see also Alex Zimmerman, *How Often Do New York City Schools Bar Parents from Entering? The City Could Soon Be Forced to Say.*, CHALKBEAT (Mar. 7, 2018), <https://perma.cc/KYQ3-TURW>.

<sup>282</sup> N.Y.C. Council Int. No. 670 (2018), <https://perma.cc/V8ZZ-2K4M>. The full categories the bill requires for disaggregation are as follows: “(i) student race and ethnicity; (ii) student gender; (iii) student special education status; (iv) student English language learner status; (v) student eligibility for the free and reduced price lunch program; (vi) parent race and ethnicity; (vii) parent gender; (viii) primary language of parent; (ix) community school district; and (x) grade level.” *Id.*

<sup>283</sup> *Id.*

D. *Introduce a “Limited Access Letter” Hearing, Modeled After a Suspension Hearing*

As discussed earlier, the suspension hearing process in the DOE—while highly flawed—might provide a model for an appropriate adjudication mechanism for parents.<sup>284</sup> Given that the DOE already has suspension hearing office “machinery” in place, allowing parents a chance to be heard by a neutral hearing officer before a limited access letter goes into effect could be a fair way to resolve the solution. This fact-finding proceeding could work in the same way the suspension process currently does: parents could present evidence explaining why the principal’s version of events was not accurate. The school could also present evidence. Both sides could present witnesses, cross-examine the other side’s witnesses, and introduce documents for review.

This process could also, in the long run, save the DOE time. Rather than requiring a regional superintendent or other person to review an appeal of the letter (as the new Los Angeles process requires, detailed below), an independent hearing officer could take a first pass at resolving the situation. In doing so, the hearing officer could “weed out” nonsensical limited access letters and keep tabs on how individual schools are operating.

In late 2016, shortly after the PON report, LAUSD implemented an initial appeals process for disruptive person letters.<sup>285</sup> To document and outline this policy, LAUSD formally issued a written bulletin entitled “Disruptive Person Letter.”<sup>286</sup> Under the new appeals process, a parent can now first appeal the letter to the school’s principal, and, within thirty days of receiving the appeal, the principal shall issue a written response.<sup>287</sup> After the initial appeal to the principal, the parent (or other letter recipient) may then appeal the letter to the local district superintendent or designee.<sup>288</sup> The district must respond within thirty days to issue the final decision.<sup>289</sup> If the letter is upheld by the principal or the district, then the school must review the letter every ninety days.<sup>290</sup> One loophole is that the new policy does not specify the individual who must conduct the review—meaning that potentially a person with vested interests in supporting school personnel over parents might be reviewing the letter.<sup>291</sup>

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<sup>284</sup> See discussion *supra* Section III.A.2.

<sup>285</sup> See Kohli, *supra* note 245.

<sup>286</sup> Disruptive Person Letter Policy Bulletin, *supra* note 257.

<sup>287</sup> *Id.*

<sup>288</sup> *Id.*

<sup>289</sup> *Id.*

<sup>290</sup> *Id.*

<sup>291</sup> Kohli, *supra* note 245; see also Disruptive Person Letter Policy Bulletin, *supra* note 257.

The bulletin also includes a sample “warning” letter for principals to use in interacting with parents or others prior to issuing a disruptive person letter.<sup>292</sup> The warning letter template begins:

Dear Mr./Mrs. \_\_\_\_\_:

I am writing to confirm our conversation on \_\_\_\_\_ and to warn you I am considering restricting your access to our campus. Your conduct on \_\_\_\_\_ created a serious disturbance, which required the attention of school personnel.

*[DESCRIBE INCIDENT THAT MAY LEAD TO DISRUPTIVE PERSON LETTER]*

I found your behavior to be \_\_\_\_\_. While I appreciate your concern for your child, such a disturbance to the instructional program cannot be tolerated. I cannot operate a school effectively when conferences are not scheduled.<sup>293</sup>

The letter goes on to cite the relevant School Board Rules and criminal statutes which may apply if a parent persists in making a disturbance.<sup>294</sup> The bulletin also includes a form for a parent to appeal a letter at the school level, as well as another form for a parent to appeal the letter at the local district level.<sup>295</sup> Following is the sample of a disruptive person letter that a principal may use that matches the “warning” letter almost identically for the first three paragraphs, as well as its closing.<sup>296</sup> However, the letter includes the following text for principals to use in restricting a parent’s access:

This letter **does not** preclude you from visiting the school or attending school activities, but merely requires calling the principal ahead of time to **schedule an appointment**.

If you have business at the school, please call \_\_\_\_\_ in advance for an appointment. You may not enter the school without \_\_\_\_\_ authorization.<sup>297</sup>

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<sup>292</sup> Disruptive Person Letter Policy Bulletin, *supra* note 257, attachment A.

<sup>293</sup> *Id.*

<sup>294</sup> *Id.*

<sup>295</sup> *Id.* attachment B, C.

<sup>296</sup> Compare *id.* attachment A, with *id.* attachment D.

<sup>297</sup> Disruptive Person Letter Policy Bulletin, *supra* note 257, attachment D (emphasis in original).



The letter also describes the appeals process: “You may appeal the letter to the issuing principal and, if not resolved, to the local district director.”<sup>298</sup>

These are exactly the types of procedures that the New York City DOE should put into place for limited access letters. The LAUSD bulletin—a document analogous to the DOE’s Chancellor’s Regulations—provides the appropriate formality for principals, staff, attorneys, and parents to rely on when a dispute arises. Again, given the extensive hearings and appeals process already in place for school suspensions in New York, it would seem only a small step to introduce a written policy similar to the school suspension process for limited access letters.

In addition to the formal written notice component, the DOE should also implement the warning letter aspect of the LAUSD appeals plan. The formality of a warning letter provides fair notice to parents that their behavior may not be acceptable to the school. At the same time, it facilitates a dialogue between a principal and parents before their behavior crosses the school’s line. This dialogue in turn gives the parent a chance to share their side with the principal. Given that the first notice a parent currently receives in New York City of any problem is the letter banning them from the campus, a prior written warning would be very useful.

The DOE should also adopt LAUSD’s letter template for a number of reasons. First, the uniformity of the letter may help reduce implicit bias and/or problematic language by principals. The standardization of the letter would also ensure that parents receive consistent information on what the limited access letter actually means. The clarity of the disruptive parent letter template—including the statement in bold that the letter “**does not** preclude you from visiting the school or attending school activities”<sup>299</sup>—also makes the process clearer for parents. Even some of the subtle nuances—such as the letter’s note of appreciation for the parent’s “concern for your child”<sup>300</sup>—seem well-executed and logical. The DOE should adopt a similar tone with public school parents.

Finally, the LAUSD appeals process seems both simple and intuitive for parents. Rather than relying on opaque references to state and federal education laws, the appeals process allows a parent to immediately request a chance from the authority figure they likely know best at the school—the principal. The thirty-day requirement sets a clear and timely standard for the school to adhere to, while also giving principals sufficient time to prepare a more thorough investigation and report. The second

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<sup>298</sup> *Id.*

<sup>299</sup> *Id.* (emphasis in original).

<sup>300</sup> *Id.*

level of appeal, to the local district superintendent, also seems well-designed. By allowing the superintendent to have final say in the matter, the procedure allows schools to maintain a safe campus while also ensuring that parents are not bound to the discretion of a principal who may already be biased against them.

There may, of course, be limitations and downsides to this process. For instance, the appeals process might be, in essence, a sham, giving the appearance of due process while remaining a system that excludes parents of color and parents of students with disabilities systematically from school campuses. A parent might not receive the letter, given that many people may experience housing insecurity or do not use snail mail regularly. A letter might not be translated into a parent's native language. Parents might feel pressured to obtain legal representation, creating a system where only parents represented by counsel would receive the full attention of the superintendent. Pitfalls still abound. However, this appeals process would still almost certainly be preferred to the current lack of any system.

#### CONCLUSION

Limited access letters pose a serious problem for parents of color and for parents of children with disabilities. Students of color and students with disabilities already face disproportionate levels of school discipline. Banning parents from campus exacerbates the carceralization of schools and reinforces the reality of the school-to-prison pipeline.

As Los Angeles's PON urges: "Listen to parents; don't restrict their access to campus when they are informed and empowered, because they are your most crucial partners in educating children."<sup>301</sup> Ultimately, when a school excludes a parent, it is the student who suffers the most. No child deserves to have their parent banned from watching them play soccer, star in a play, or graduate from high school. By introducing a formal set of requirements for fact-finding and dispositional hearings in a school suspension context, the DOE has already shown a keen and admirable interest in reforming student discipline. Applying the same interest to helping schools deal fairly with the parents who may present similar issues—and, preferably, by banning limited access letters outright—is the next logical step.

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<sup>301</sup> See *Issuance of 'Disruptive Person Letters' to LAUSD Parents: Modifying the System to Maintain School Safety and Improve Parent Relations*, PARENT ORG. NETWORK (Oct. 26, 2016), <https://perma.cc/7LMM-5MFM>.