

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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YA-YA NETWORK and AMY WAGNER,

Plaintiffs,

**STIPULATION AND ORDER  
OF SETTLEMENT**

-against-

03 Civ. 8351 (DLC)(RLE)

THE CITY OF NEW YORK and RAYMOND KELLY,  
Commissioner of the New York City Police Department,

Defendants.

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**STIPULATION AND ORDER**

**WHEREAS**, the plaintiffs have filed a complaint in this matter regarding the New York City Police Department's enforcement of New York Penal Law Section 240.35(5); and

**WHEREAS**, the City denies the allegations in the complaint; and

**WHEREAS** the parties wish to resolve this matter without further litigation and without admissions of liability;

**IT IS HEREBY STIPULATED AND ORDERED:**

1. Attached to this Stipulation and Order, as Exhibit A is a directive which describes the NYPD's future enforcement of New York Penal Law Section 240.35(5). The City shall keep this directive in effect, and it shall have the same effect as other NYPD directives, as long as it is consistent with existing law.

2. Within ten days of the entry of this Stipulation and Order, the directive will be issued as a FINEST Message which will be disseminated at each command's FINEST terminal, and will be read at ten consecutive roll calls.

3. Within ten days of the entry of this Stipulation and Order the School Safety Division will send a memo including the contents of the FINEST Message to School Safety Supervisors, who will advise the School Safety Officers of its contents.

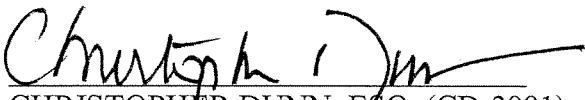
4. Within ten days of the entry of this Stipulation and Order, defendant City will notify administrators of New York City Schools of the directives in the FINEST Message. This directive will be disseminated to New York City schools by publishing the directive in the

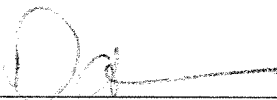
Principal's Weekly newsletter, which is distributed to school principals by the Department of Education, in three consecutive newsletters.

5. Should the directives in the FINEST Message become inconsistent with the law, the City may withdraw the FINEST Message without seeking leave of Court.

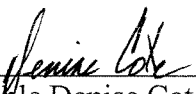
6. The directive, which refers to the NYPD's enforcement of New York Penal Law Section 240.35(5), will be memorialized in writing in NYPD materials, which includes School Safety Division materials, in a manner consistent with similar directives reflecting enforcement of statutes, in the ordinary course of business of the NYPD. Upon request by plaintiffs, defendant will provide them with copies of Patrol Guide revisions or training materials, if any, that have been issued to reflect the directives in the FINEST Message.

7. This action is dismissed with prejudice.

  
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SO ORDERED

  
Honorable Denise Cote  
United States District Judge

Dated: New York, NY  
March 16, 2005

**EXHIBIT “A”**

Penal Law section 240.35(5) provides in part that a person is guilty of loitering when he or she

loiters or remains in or about school grounds, a college or university building or grounds . . . not having reason or relationship involving custody or responsibility for a pupil or student or any other specific, legitimate reason for being there, and not having written permission from anyone authorized to grant the same.

On public sidewalks near schools, section 240.35(5) does not apply to First Amendment activity, such as handing out leaflets, seeking petition signatures, holding signs, praying, wearing buttons, picketing, holding press conferences, or engaging in other activity that appears to be intended to convey a lawful message. However, the mere presence of one or more individuals together on a public sidewalk at a school location is not First Amendment activity, if it is not apparent to the officer that they intend to deliver a message. Examples of factors that may indicate the intent to deliver a message is the holding of signs, placards and leaflets, chanting, singing, and the like.

Effective immediately, members of the service shall not enforce Penal Law section 240.35(5) against persons engaged in First Amendment activity. The Legal Bureau should be consulted in circumstances when members of the service have questions about whether particular activities on a sidewalk or street near school grounds constitute First Amendment activities. In all cases, enforcement action may be taken to insure that access to and from school grounds remains open and that students are not subjected to intimidation and harassing conduct. Where appropriate, members of the service may also enforce any other provisions of law regulating conduct on sidewalks near schools, including trespass, disorderly conduct and harassment.

Members of the service are reminded that a demonstration outside of a school may be policed as any other demonstration would, with the imposition of reasonable time, place and manner restrictions such as use of barriers, restrictions on amplified sound during the hours of school and limitations on the locations of demonstrators.

Questions concerning the contents of this message or any specific enforcement situation should be directed to the Legal Bureau at (646) 610-5400.