

Next Round in the Cell Phone Fight

by Gotham Gazette Staff
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The long-running battle between the Department of Education and the City Council shows no sign of letting up. In fact, if rhetoric exchanged at an Education Committee hearing last week offer any indication, the fight could move to a new and even more acrimonious level and even wind up in court.

Earlier this month, the City Council [overrode](#) Mayor Michael Bloomberg's veto of a bill -- [Intro 351-A](#) -- that requires the city to allow public school students to have cell phones with them on their way to and from school every day. The next day, Department of Education safety agents set up their scanners at [Forest Hills High School](#) in Queens, which is "not a school that has a reputation for having students who carry weapons," as the [InsideSchools.org Blog](#) put it. But agents predictably found lots of cell phones and confiscated them.

"The thing that is quite clear is that the City Council has decided to override the mayor's veto, so it's law now," City Councilmember Melinda Katz, whose district includes the school, told the [Times Ledger](#). "Why they would [confiscate phones] is beyond me."

Setting the Boundaries

The administration, however, has made it clear it does not feel bound by the council's action. When asked by the bill's sponsor, Councilmember Lewis Fidler of Brooklyn, whether the council and administration could sit down and attempt to reach a compromise on this issue, Deputy Mayor Dennis Walcott was largely dismissive. While he "respects the override of the veto" and remains "open to dialogue," Walcott told council members a meeting was unlikely to produce any results. Cell phones in schools represent an issue where the administration and the council "will always be at odds," he said.

Since Mayor Michael Bloomberg won mayoral control of the schools, the administration has adamantly maintained that it -- and it alone, not the City Council -- has [responsibility](#) for what goes on inside school buildings. In addition, Walcott indicated the bill does not do

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anything since it does not address what goes on in school.

“They’ve read the first sentence and ignored the second,” Fidler said. While the bill does say students should be allowed to have phones going to and from school “ ignoring what goes on in class “ it also states, “No person shall interfere with the provision of such telephone to, or the use of such telephone by, such student.”

“They can collect every cell phone as kids come into school,” said Fidler, but school officials would then have to return the phone at the end of the day. “It will not permit them to confiscate a phone that is not being misused.”

The bill was worded this way precisely to address the issues of mayoral control. “We’ve gone to the very limits of our power,” Fidler said. “We’re not telling them what to do on school grounds.”

What’s Next?

Despite Walcott’s comments, a City Council spokesperson and Fidler expressed hope that the two sides could reach a compromise in the next 90 days.

“We at this point still remain very hopeful that the Department of Education and the administration will respect the cell phone legislation we passed into law,” said the council spokesperson, Anthony Hogrebe.

But if that does not happen, the case could end up in court. The legislation specifically states that a person whose rights under the law are interfered with can go to court. This means, Fidler said, that a student whose cell phone was confiscated “ or the parents of that child “ could bring a legal challenge against the Department of Education. While saying he could not speak for his wife or son “ a public school student who, on his parents’ instructions, carries a cell phone “ “we would be willing to be that plaintiff.”

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The council might also challenge the Bloomberg administration “ and it would not be the first time. In 2004, the council approved legislation, sponsored by Quinn, barring any city agency from entering into a contract for more than \$100,000 with an entity that did not offer domestic partners the same benefits as spouses. In that [case](#), the administration won in the State Court of Appeals, which stated Bloomberg did not have to [enforce laws he deemed invalid](#).

During the Giuliani administration, legal battles, including lawsuits that accused the council of impeding on the [mayor's executive power](#), were more common.

A Ringing Controversy

While cell phones had long been officially banned in city schools, the prohibition only affected students in so-called scanner schools, buildings where all students went through metal detectors every day. These tended to be schools that the education department considered unsafe. Some parents and students in those schools had [balked at the city ban](#), claiming it unfairly discriminated against the predominantly low-income, black and Latino students who went to those schools.

But the issue gained prominence in spring 2006 when the administration announced it would [begin random scanning](#) with portable metal detectors throughout the city. The devices could be at any school at any time “ without warning. Safety agents would confiscate any and all cell phones and generally not return them until a parent or guardian showed up to claim it.

The decision sparked an uproar. Parents contend cell phones are a necessity in a city where students, some as young as 11 or 12, travel long distances. The administration’s ban, many have said, shows how out of touch the department is with the challenges of raising children in New York and how it dismisses the [concerns of parents](#).

For its part, department officials argue that students use cell phones to cheat on tests, take unauthorized pictures of their fellow students and disrupt classes. Students have even, officials

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say, used the phones to organize attacks on fellow students.

Last week's City Council hearing showed that 18 months have done nothing to dim the intensity of these arguments. The hearing was focused on the department's efforts to engage and involve parents. But when Councilmember Peter Vallone, chair of the council Public Safety Committee, had an opportunity to question Walcott and Martine Guerrier, who is in charge of parent involvement for the department, he quickly brought up cell phones and criticized Guerrier for not challenging the department's policy. "If parents are overwhelmingly against this ban, would it be part of Ms. Guerrier's job to convey that?" he said.

Apparently not. Guerrier's office is not responsible for cell phone policy

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