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AN INVESTIGATION  
INTO MISCONDUCT RELATING TO PEDOPHILIA  
BY PETER MELZER, A TEACHER  
AT THE BRONX HIGH SCHOOL OF SCIENCE

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## I. INTRODUCTION

This case, which commenced with allegations that Peter Melzer, who is a teacher of physics and science at the Bronx High School of Science, has publicly and vigorously advocated pedophilia, raises such fundamental issues as:

- what dangers are presented by Melzer's self-professed sexual desire for children,
- what harm or potential for harm to students is created by Peter Melzer's public advocacy of pedophilia, involving sexual relations between adults and minors,
- whether and how the school's mission to provide a safe and effective educational environment for its students is hindered by Melzer's conduct as a pedophile where as a classroom teacher and as an extracurricular adviser he has extensive unsupervised contact with a multitude of students,<sup>1</sup>
- whether and how confidence in and cooperation with the school by students' parents will significantly be diminished by Melzer's continued presence there,
- whether Melzer's public advocacy of pedophilia is incompatible with his role and responsibilities as a teacher of young people, and
- how under the facts of this case may Melzer's right to freedom of speech be accomodated with the rights of students and their parents to a safe and effective education.

Just resolution of the many serious issues raised by this case requires complete review of all the available evidence and a careful balancing of the legitimate interests of the parties

most immediately affected: the Bronx High School of Science and the school system in general, which are responsible for educating students safely, efficiently, effectively and without disruption; Peter Melzer, who in addition to the protections of tenure, enjoys constitutional protections of speech and association; the parents of Bronx High School of Science students, who are responsible for the welfare of their children and who are entitled to be active participants in the educational process; and, most important, the students, for whom the school system exists and whose best interests we all have a duty to serve and protect.

## II. THE BACKGROUND OF OUR INVESTIGATION

Peter Melzer, born April 16, 1940, is licensed by the Board of Education in physics and general science at the high school level and in science at the junior high school level. He has been teaching for the Board of Education since 1963, and has taught at the Bronx High School of Science since 1968.<sup>2</sup> The Bronx High School of Science, also referred to as "Bronx Science," is one of four New York City public high schools specializing in a science curriculum.<sup>1</sup> State law obliges the Board of Education to maintain Bronx Science as a special high school to which students are admitted "by taking a competitive, objective and scholastic achievement examination, which shall be open to each and every child in the city of New York."<sup>2</sup> The academic excellence of Bronx Science is widely recognized, and every year many more students apply than are accepted. Melzer has taught physics and science to students in all four grade levels at Bronx Science. Many of his courses are required for graduation. Melzer has also participated in a Bronx Science program through which junior high school students receive special instruction in physics.<sup>3</sup> In addition to in-class teaching

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<sup>1</sup>The other three science high schools are Brooklyn Technical, Townsend Harris and Stuyvesant.

<sup>2</sup>New York State Education Law, section 2590-g(12).

<sup>3</sup>Melzer once filed a grievance because he claimed to have been excluded unfairly from assignment to the program for junior high school students.

duties, Bronx Science teachers, including Melzer, assist students academically outside class hours and serve as advisers to students participating in extra-curricular activities. Official evaluations of Melzer's teaching performance during his classes--typically done by the principal or by the physics chairman approximately twice each year--indicate that he has been a satisfactory instructor. For the 1992-93 school year Melzer had taken a scheduled sabbatical leave. We have been informed that he wishes to return to his teaching duties at Bronx Science for this school year.

This Office opened its investigation into Melzer in May of 1992 upon reviewing a file on Melzer that the now-defunct Office of the Inspector General of the Board of Education generated between 1984 and 1986. Melzer came to the attention of the entire Bronx Science community as a result of a three-part television news report by WNBC's John Miller on an organization called the North American Man/Boy Love Association or NAMBLA. The report, aired on March 2, 3 and 5 of this year and viewed by many hundreds of thousands of households each night, prominently displayed Melzer on camera at public meetings of NAMBLA's New York chapter, and identified him, accurately as our investigation has found, as a pedophile and a leader of NAMBLA, as well as a teacher at Bronx Science.

In gathering evidence for this report, we have, among other actions, interviewed sources familiar with Melzer and NAMBLA, including present and former members of the FBI, the New York City Police Department and representatives of other law enforcement agencies. We have consulted psychiatric

experts about pedophilia. We have spoken with parents' representatives and with school administrators and staff.<sup>4</sup> Additionally, we have reviewed the videotapes of the WNBC broadcasts. We have inspected files from the Office of the Inspector General of the Board of Education about a complaint against Melzer in 1984-85.<sup>5</sup> To profile Melzer's personal advocacy of pedophilia, we have examined his writings for a publication entitled the *NAMBLA Bulletin* as well as other articles published in the *Bulletin* when Melzer served on the editorial staff.<sup>6</sup> We obtained a transcript of

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<sup>4</sup>We did not interview Melzer's current or former students because of the extreme sensitivity of the issue and our concerns about the legal consequences of possibly aggravating an already volatile situation by surveying students. See *Matter of Goldin v. Board of Education*, 364 N.Y.S. 2d 540, 543-44 (1974); *Roth v. Veteran's Administration*, 856 F.2d 1401, 1406 (9th Cir.1988), citing *Zamboni v. Stamler*, 847 F.2d 73 (3d Cir.1988), and *Czurlanis v. Albanese*, 721 F.2d 98 (3d Cir.1983).

<sup>5</sup>In November of 1984 the Board of Education's Office of Legal Services and the Board's Inspector General were informed by representatives of the Bronx District Attorney's Office that Melzer was an officer of NAMBLA. The Bronx District Attorney had received an anonymous telephone call about Melzer and an anonymous letter containing photocopies of articles written by Melzer in the *NAMBLA Bulletin*. In March of 1985 representatives of the Inspector General conducted an audiotaped interview of Melzer. The Inspector General then referred its case to Legal Services which offered an opinion to Chancellor Nathan Quiñones on the merits of a disciplinary proceeding. No administrative action against Melzer was ever taken. The Inspector General closed its case on Melzer in a memorandum dated January 2, 1986.

<sup>6</sup>Some of the *Bulletin* articles, discussed in Section IV(3) of this report and also appearing in the Appendix, contain extremely graphic language about sexual acts and bodily functions. We have included such material only



Melzer's sworn testimony as a defense witness at the criminal trial of a NAMBLA member accused and ultimately convicted of sodomy in 1986. We have analyzed the important constitutional issues raised by Melzer's public advocacy of pedophilia and his membership in NAMBLA. Finally, we invited Melzer to discuss with us his espousal of pedophilia and how it affects his responsibilities as a teacher of young people. Through his attorney he has declined our invitation.

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to the extent necessary to illustrate the content of the *Bulletin*.

### III. THE CENTRAL ISSUE: PEDOPHILIA AND THE RISKS TO STUDENTS

The American Psychiatric Association's *Diagnostic and Statistical Manual of Mental Disorders* classifies pedophilia as a symptom of a disorder called "paraphilia." Paraphilia appears as "recurrent intense sexual urges and sexually arousing fantasies generally involving either (1) nonhuman objects, (2) the suffering or humiliation of oneself or one's partner (not merely simulated), or (3) children or other nonconsenting persons."<sup>3</sup> To be diagnosed as a pedophile, a person must meet any one of the following three criteria: he or she must experience "recurrent intense sexual urges and sexually arousing fantasies involving sexual activity with . . . children" for at least six months, or must be "markedly distressed" by these urges, or must have acted on the urges.<sup>7</sup> The American Psychiatric Association has described some typical patterns of pedophilic behavior:

People with this disorder [pedophilia] who act on their urges with children may limit their activity to undressing the child and looking, exposing themselves, masturbating in the presence of the child, or gentle touching and fondling of the child. Others, however, perform fellatio or cunnilingus on the child or penetrate the child's vagina, mouth, or anus with their fingers, foreign objects, or penis, and use varying degrees of force to achieve these ends. These activities are commonly explained with excuses or rationalization that they have "educational value" for the child, that the child derives "sexual pleasure" from them, or that the child was "sexually provocative" -- themes that are also common in

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<sup>7</sup>*Id.* at 284-85.

pedophilic pornography. . . . [T]he person may be generous and very attentive to the child's needs in all respects other than the sexual victimization in order to gain the child's affection, interest, and loyalty and to prevent the child from reporting the sexual activity.<sup>8</sup>

*Webster's Third International Dictionary* defines pedophilia as the form of paraphilia "in which children are the preferred sexual objects."<sup>9</sup> As we are not clinical experts, our references to pedophiles and pedophilia are based on Webster's definition. In general, NAMBLA and Melzer in his writings for that organization use the terms without precisely defining them.

Serious and lasting consequences to children from their exposure to pedophiles have been documented. Children so exposed have been diagnosed as suffering from depression, guilt, rage, delinquency, lowered self-esteem, social withdrawal, suicidal and homicidal impulses, self-mutilation, somatic disturbances, impaired relationships with others, and sexual disorders.<sup>10</sup> That pedophilia involves violence against children can be seen not only by its devastating effect on children but also by considering the nature of the relationship between the active pedophile and his or her victim. In general, the pedophile seeks to dominate the victim, which can lead to actual physical harm. Thus, it has been noted that  
aggression and sadism are inherent components of  
[pedophilia.] . . . [It] involves dominance and power over  
the children. . . . Dominance over children by the

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

<sup>9</sup>*Webster's Third International Dictionary* (Merriam-Webster, 1986).

<sup>10</sup>*See*, Suzanne M. Sgroi (ed.), *Vulnerable Populations, vol. 2* (Lexington Books, 1989), pp. 85-109; Mic Hunter (ed.), *The Sexually Abused Male, vol. 1* (Lexington Books, 1990), pp. 106-136.

pedophiles provides the opportunity for them to experience the erotically tinged aggression that is so important in [their] arousal. The aggression may be under control or may be out of awareness, but it is never far away. In a situation in which the sexual partner is a child and comparatively helpless, injury may be inflicted in cold blood, in passion, or in panic.<sup>11</sup>

It should also be noted that pedophilia is found in heterosexuals and homosexuals and in women as well as men, and it is not confined to any particular age group.<sup>12</sup> Our concern is not at all a pedophile's sex or sexual orientation but the harm, actual and potential, to the welfare and educational progress of students that results from their mandated contact with an active pedophile.

There is a particularly significant risk where, as here, a teacher, entrusted with the care of young students to whom he has a self-proclaimed sexual attraction,<sup>13</sup> has unsupervised direct contact with potentially thousands of young people, from junior high school students to seniors in high school.<sup>14</sup> And, as here, where a teacher advises students in their extracurricular activities, there are even greater opportunities for unsupervised contact with young people outside regular

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<sup>11</sup>Harold I. Kaplan and Benjamin J. Sadock (eds.), *Comprehensive Textbook of Psychiatry/IV. Fourth Ed.* (Williams & Wilkins, 1985), p. 1073.

<sup>12</sup>*Diagnostic and Statistical Manual, id.*; John M. Oldham et al. (eds.), *Review of Psychiatry, vol. 12* (American Psychiatric Press, 1993), pp. 10-11.

<sup>13</sup>See Section IV, subdivisions 1 and 2 of this report.

<sup>14</sup>Instructors at Bronx Science may teach as many as twenty-five classroom periods per week, each period being approximately forty minutes in duration. The student population at Bronx Science is approximately 3,000.

school hours and the school's grounds.

The risk to students from exposure to an active pedophile is immeasurably magnified because young people, and boys in particular, are very reluctant to report sexual misconduct to the proper authorities. A recent national survey found that of those students in grades eight through eleven who suffered sexual harassment, 27% of the boys and 19% of the girls told no one. In general, 23% of all those harassed told a family member, but boys spoke out to their families much less frequently than girls, 11% to 34%. Only 7% of harassed students informed school officials. Such reluctance would cripple any attempt to resolve this problem by placing the burden solely on students to promptly report teachers' inappropriate sexual comments and behavior.<sup>15</sup>

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<sup>15</sup>American Association of University Women Educational Foundation, *Hostile Hallways; The AAUW Survey on Sexual Harassment in America's Schools*, June 1993, p. 14.

## IV. MELZER'S CONDUCT AS A PEDOPHILE

### 1. Early evidence of Melzer's pedophilia

The first documentary evidence of Melzer's pedophilia materialized in 1979. A United States Postal Inspector obtained Melzer's name and address from a mailing list of the North American Man/Boy Love Association, which was found during the execution of a search warrant by federal agents in California in May of 1979. In a letter dated June 23, 1979, replying to correspondence from the Inspector who was posing as a member of a British pedophile organization named P.I.E., an acronym for the Pedophile Information Exchange, Melzer wrote that he had joined P.I.E. in 1978 when he was living in Britain and that "[u]p to a year ago I had never knowingly met other serious like minded individuals [such as those in P.I.E.]." <sup>4</sup> He noted that "I am attracted to boys up to the age of about 16 . . ." <sup>16</sup>

An article by Melzer in a 1982 issue of the *NAMBLA Bulletin* further revealed his personal and public commitment to promoting pedophilia.

On discovering PIE and, subsequently, NAMBLA several years ago, my spirits had soared . . . [with the] hope that organizations of intelligent, outspoken paedophiles existed . . . . Joining was not enough. All of those years of psychological oppression had to be vindicated, and I channeled all of my anger and energy into helping make NAMBLA a stronger and more effective organization. In

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<sup>16</sup>Melzer then added that "I am not willing to engage in unlawful acts . . ." The postal inspector's investigation concluded without uncovering any evidence of criminal conduct by Melzer.

so doing, I gained a certainty in my own identity . . .<sup>17</sup>

Melzer resigned as the editor of the *Bulletin* and as a member of NAMBLA's national governing body, called the "Steering Committee," but he did not resign from NAMBLA itself. In the announcement of his resignation, he criticized NAMBLA's failure to "develop a broad base of dedicated members[,] " concluding, in part:

Were I fulfilled as a boy lover, I would be much more at ease waiting for the millennium or working in an inefficient environment. Right now, personal priorities dictate that I get my own head together as a boy lover. When and if that ever occurs, I hope to come in again with renewed vigor.<sup>18</sup>

Melzer's invigorated return to the public advocacy of pedophilia occurred no later than December of 1983; by that time he had become treasurer of NAMBLA's national organization.<sup>19</sup> Since then he has continued to promote pedophilia directly and through NAMBLA, as we shall document.

## **2. Melzer's sexual contact with children**

Melzer has acted upon his self-acknowledged attraction to boys "up to about the age of 16." Kevin Healy, now retired from the New York City Police Department, was employed as

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<sup>17</sup>See "Taking a Leave of Absence," *op. cit.*

<sup>18</sup>*Id.* The "Steering Committee" is described on pp. 20-21 of this report.

<sup>19</sup>Law enforcement sources--as well as Melzer himself in his testimony in the trial of *People v. Bagarozzy*, Bronx County Indictment number 280 of 1985--indicate that Melzer was NAMBLA's treasurer in December of 1983.

a detective in the Department's Public Morals Division in the early 1980's when, posing as a NAMBLA member, he worked with Melzer on NAMBLA's Steering Committee. Healy distinctly recalls having a conversation in or around 1983 with Melzer during which Melzer discussed having sexual relations with a young boy or boys in the Philippines.<sup>5</sup> The Philippines has been cited as a popular destination for sex tourism by pedophiles in the *NAMBLA Bulletin*.<sup>20</sup>

Melzer's presence in the Philippines in 1983 is corroborated by a letter that he sent to the principal of Bronx Science in October of 1983. In the letter, Melzer offered to discuss with faculty members an educational conference that he had recently attended in the Philippines; in the letter he also suggested that an exchange program between Bronx Science and a science high school in the Philippines be considered. Detective Healy told us he did not know about this letter, and indeed he would have had no way of knowing about it. The letter, taken together with Healy's statement, offers another insight into Melzer's character. He used an ostensibly educational visit to a conference on children as an opportunity to gratify his sexual impulses, thereby substantiating the concern that he is capable of manipulating his professional responsibilities to advance his sexual agenda.

### **3. Melzer's promotion of pedophilia through NAMBLA and the *NAMBLA Bulletin***

For the past decade, Peter Melzer has consistently promoted pedophilia through his leadership role in NAMBLA and its official publication, the *NAMBLA Bulletin*.<sup>6</sup> As

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<sup>20</sup>See the *Bulletin's* April 1993 issue, p. 17 and the March 1993 issue, p. 7.



treasurer and as a member of NAMBLA's national Steering Committee, Melzer holds and has held important policy-making positions in the organization. He was at one time editor-in-chief of the *Bulletin*, which is the chief national forum for pedophiles and NAMBLA members to discuss their interests and is NAMBLA's most visible means of contact with the public. He remains a member of the "Collective" that serves as the *Bulletin*'s editorial board and is a regular contributor of signed articles as well.<sup>21</sup> In recognition of his contributions to the publication, Melzer has officially been commended in the *Bulletin* for his:

creative output, his eagerness to take on tasks together with his unquestionable capacity for leadership [which] set an example for all of us. All in all, it is difficult to imagine the *Bulletin* without him.<sup>22</sup>

Given Melzer's national policy-making roles in NAMBLA, he bears at least some

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<sup>21</sup>Melzer has received by-line credit for at least thirteen articles appearing since 1982 in the *NAMBLA Bulletin*, including three reprinted articles. He is cited in at least four other articles during this period in addition to the numerous times that he is listed as a *Bulletin* editor. (In his testimony for the defense at a 1986 criminal trial, *People v. Bagarozzy*, discussed below, Melzer agreed with his questioner's characterization of the "Collective" as the *Bulletin*'s editorial staff.) Since we were able to review only a sample of all the issues of the *Bulletin* from the last thirteen years, we cannot state the exact total of articles written by Melzer. (Issues that we reviewed at least in part were: March-April 1982, March 1983, December 1986, January-February 1987, May 1987, June 1987, July-August 1987, February 1988, June 1989, March 1991, and every issue published in 1992 and through June 1993.)

<sup>22</sup>See page 2 of the March-April 1982 issue.

responsibility for the overall content of its official publication. In analyzing Melzer's promotion of pedophilia through the *Bulletin*, however, we limit ourselves to articles that he wrote himself or that appeared in issues in which he is listed as a member of the editorial board.

*Explicit advice on how to seduce children.*

Melzer's promotion of pedophilia is not limited to mere academic discourse. In a recent issue of the *NAMBLA Bulletin*, with Melzer's name appearing in its masthead as an editor, a writer identified under the pseudonym "A.Z." offers stark advice to pedophiles on how best to manipulate children into sexual contact.<sup>23</sup>

My first suggestion [for obtaining a sexual relationship with a boy] is to restrict your sexual involvement and overtures to boys who need you, boys who value you and your friendship. . . . Before risking any direct sexual overture, you can tell a lot about a boy with a few well-placed sexual jokes or comments. . . . Leave a pornographic magazine someplace where he's sure to find it . . . Masturbation and pornography go hand in hand. An aroused and adventurous adolescent with a positive view of sexuality may try just about anything to get off. . . . [T]he best way for you to pursue boys is to emigrate from the US . . . to a country or culture where boy-love has greater acceptance . . . Weigh the pros and cons of becoming involved yourself in sex tourism overseas. Seek and find love from American boys on a platonic, purely emotional level. For sexual satisfaction, travel once or twice yearly overseas. You might get arrested overseas . . . [b]ut the legal consequences . . . will be less severe . . .<sup>24</sup>

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<sup>23</sup>The author acknowledged that those were not his true initials.

<sup>24</sup>See the January-February 1993 *Bulletin*, pp. 28-30. (A copy of the article is included in the appendix.) The

Advice on performing anal and oral intercourse on minors follows. The article's author also relates his own experience of first finding substantial opportunities for sexual contact with children through his employment as a counsellor at a summer camp. In this regard he writes:

I . . . never had a shortage of cute kids eager to sit on my lap. I watched 40 boys, ages nine through 13, skinny dip during a lake-side camp out. Later, after I put them to bed, I made love on the sand to one of the finest nine-year-old *bodies* God has ever made. . . . I watched each day while my crew of boys dressed, undressed, and showered.<sup>25</sup>

The writer's abuse of a position of trust as a counsellor of children was for him a matter only of pleasant nostalgia. Thus, the article not only offers advice on

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article is framed as a response to a purported letter from a seventeen year old who is seeking advice on how to seduce young boys. How seventeen year olds would have access to the *Bulletin* in large enough numbers to merit devoting six pages to the response is never established. In general, *Bulletin* articles depict young people as the initiators of sexual contact with adults. The article is carefully written to state that "boy-lovers" should not seduce children, and its stated purpose is to "suggest instead how to find out which boys are interested in exploring their sexuality with you . . ." The overall content, however, clearly constitutes a primer in the seduction of children.

<sup>25</sup>*Id.* at 26; emphasis added. The author revealed the purely physical nature of his interest in minors both by his choice of the word "bodies" and by his following statement that of the "roughly 30 different boys both in and out of summer camps" with whom he became sexually involved, only "[t]hree of those encounters qualified as love relationships. The others were simply beautiful kids who happened across my path." *Id.* A photograph of a nude adolescent, cropped just barely to avoid exposing his genitals, is included with the article.

seducing children, but also speaks approvingly of misusing a position of trust to obtain sexual gratification. The analogy to educators is unmistakable: if a camp counsellor is justified in sexually abusing children entrusted to his care, why should an educator be any different?

A letter printed in the December 1992 *Bulletin*, with Melzer's name again appearing in the masthead, offered similar advice:

To only the real boy-lovers, here are some tips on how to make that special boy feel good.

Touches that feel good:

- 1) Forehead and back of the neck
- 2) Back--upper and lower (best where the spine is)
- 3) Feet . . .
- 4) Stomach--when rubbed softly
- 5) Shoulders . . .
- 6) Inside of legs . . .
- 7) Full length of cock rubbed (best when rubbed around upper shaft)
- 8) Chest area rubbed (best when done to pecs)
- 9) On the front of the neck (best when done with tongue on the adam's apple. Also best when sucked)
- 10) Buttocks--rubbed one at a time
- 11) Very firm hug from behind (best when almost naked, always best when fully naked)

All the above suggestions are even better when done in a warm shower.

Sign me,

A boy-lover who knows<sup>26</sup>

The June 1993 *Bulletin*, lists Melzer as an editor and features him in an

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<sup>26</sup>See the December 1992 issue, p. 8. Typographical errors have not been corrected. The *Bulletin* advises that "[o]pinions expressed in the letters column do not necessarily reflect NAMBLA positions. Letters are presented in the spirit of a free and uncensored forum of ideas." *Id.* at 6.

article in acknowledging his activism on behalf of NAMBLA and his employment as a teacher at "a prestigious New York public high school." The same issue devotes half of one of its pages to a letter entitled "In praise of penises." The letter begins:

The penis of an adolescent boy offers the warmth and security of its size, plus a generous helping of delicious cum. But we cannot place any less prestige in the young penis of the pre-adolescent!<sup>27</sup>

The purported writer then describes in considerable detail episodes of his sexual contact with an eleven-year old. That such graphic description of sexual abuse of children might damage the reputation of the "prestigious New York public high school" where he teaches apparently never occurred to Melzer as a member of the editorial board which published this issue.<sup>28</sup>

A review of the content of articles that have appeared in recent issues of the

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<sup>27</sup>*Bulletin*, June 1993 issue, p. 20.

<sup>28</sup>The letter reads in part:

Being only 11, [he] couldn't shoot any cum into me. In the days following, we discovered that he and I both enjoyed the few spurts of clear liquid that he could "cum" into my mouth. It was mostly up to that point sucking and masturbation, which eventually led up to a sixty-nine session, and although [the eleven-year old] could only get my cock head into his warm, wet, sucking mouth, I knew he was getting off on my dick, and I felt his penis become slightly larger in my mouth.

*Id.*, p. 20. The writer claims to have been in his late teens when he had sexual contact with the eleven-year old.

A disclaimer that letters do not necessarily reflect NAMBLA's views also appears in this issue.

*Bulletin*, when Melzer was on the editorial staff, offers a further profile of Melzer's agenda.<sup>29</sup> Most frequent by far were articles describing instances of alleged discrimination against pedophiles, followed by graphic depictions of sexual acts involving young people.<sup>30</sup> Notably absent were articles describing efforts by NAMBLA to change age-of-consent laws, which is one of its professed goals. Also absent were articles seriously offering assistance for young people positively to cope with the personal, emotional and health consequences of contact with pedophiles.

*Endorsing child pornography and child prostitution*

NAMBLA's official position papers proclaim support for pornography and prostitution involving young people--positions that Melzer, by his declared agreement with NAMBLA's goals and by his consistent and vigorous promotion of NAMBLA, has in effect endorsed.<sup>31</sup> NAMBLA approves of pornography so long as the children participating have consented and receive "just compensation."<sup>32</sup> A

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<sup>29</sup>Excluded from the analysis were letters, poetry, photographs and drawings. The issues analyzed were January-February 1993, March 1993 and April 1993. Articles were categorized according to their main points.

<sup>30</sup>Usually more than one sexual act was included in each of the sexually explicit articles.

<sup>31</sup>See the appendix of this report for a copy of the constitution and position papers. When questioned by the Inspector General of the Board of Education in 1985, Melzer said that he agreed with NAMBLA's "purposes and philosophy."

<sup>32</sup>NAMBLA claims that child pornography is "not harmful, so long as those involved agree [to participate]."

child's ability to consent freely in his exploitation at the hands of adult pornographers is not addressed in the paper. NAMBLA has even taken a position favoring teenage prostitution, which it calls "hustling." Its position paper attempts to sanitize NAMBLA by the peculiar device of declaring "oppos[ition to] all laws restricting the full employment of youth." In its resolution "On Repression of Sexuality by the State," NAMBLA goes on to declare:

Sex is fun, it is beneficial, it is universally desired and enjoyed. Sex, as such, results in no harm to the individual, providing it is consensual.<sup>33</sup>

Nowhere in NAMBLA's pronouncements is there acknowledgement of significant developmental differences between children and adults. Neither is any appreciation shown of the practical difficulty in separating "sex as such" from the consequences for children of sexual contact with adults. NAMBLA publications have typically expressed serious concern only for pedophiles, and especially about the penalties for their illegal sexual relations with minors. Thus, in an article entitled, "Staying Safe and Happy as a Man/Boy Lover; Guidelines developed by NAMBLA activists for surviving in an insane world," pedophiles are advised to:

- Develop a positive relationship with your partner's family. If police become involved, expect them to pressure the boy's family to turn against you. . . .
- Discuss the possibility of police interrogation with your partner. Help him understand and prepare for the fact that police and social workers routinely threaten and coerce boys. . . .
- In particular, never discuss the specifics of an illegal relationship with therapists or social workers. In most

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See appendix.

<sup>33</sup>See the appendix of this report for the full text of the position paper.

jurisdictions, the law requires these people to report sex with minors to the police. . . .  
▪Never answer police questions. It is not in your interest to cooperate with the police. . . .<sup>34</sup>

From a reading of these and other *Bulletin* articles it is clear that when NAMBLA says "empowerment of youth," it really means the enticement of children. Melzer has clearly promoted and associated himself with this message through his long-time position as a *Bulletin* editor.

*Melzer has explicitly agreed with NAMBLA's goals.*

Melzer has, under oath, expressed agreement with the "purposes and philosophy" of NAMBLA.<sup>35</sup> He has agreed that NAMBLA's goals, as expressed in a

"statement of purpose" contained in a past issue of the *NAMBLA Bulletin*, are:

to organize support for men and boys involved in sexual and other relationships with each other, and to help educate society about them. . . . We support the right of young people . . . to choose freely the partner with whom they wish to share and enjoy their bodies. We encourage and support young people in their rebellions against the antisexual restrictions imposed upon them . . . We oppose age-of-consent laws and other legislation against the freedom of youth.<sup>36</sup>

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<sup>34</sup>See *Bulletin*, October 1991, p. 6. This article is attributed to unnamed "NAMBLA activists."

<sup>35</sup>Melzer's statement was preserved in an audiotape of his interview on March 29, 1985 with the Inspector General of the Board of Education.

<sup>36</sup>This statement was read to Melzer when he was interviewed in 1985 at the Office of the Inspector General. He agreed that it accurately formulated NAMBLA's goals, even though he asserted that individuals might differ in their specific understanding of these goals. A more recent formulation of NAMBLA's goals, appearing in the *Bulletin* next to its masthead which contains Melzer's name as a member of the editorial staff, gives somewhat



NAMBLA's main purpose, as this statement suggests and as a wider review of its literature substantiates, is to encourage pedophilia by actively supporting men who engage in or wish to engage in sexual relations with boys.

*NAMBLA is not a political lobbying group, despite its statements suggesting such a purpose.*

In the *Bulletin* and in its position papers NAMBLA clearly suggests that a fundamental purpose for its existence is the abolition of laws criminalizing non-forcible intercourse between adults and minors. However, at least here in New York and Washington, D.C., the facts contradict NAMBLA's misleading attempt to cloak itself with a political purpose. Communications by this Office with current and past staff members of the New York State Senate and Assembly Codes Committees, with the State Temporary Commission on Lobbying and with the New York City Clerk's Office revealed no record of any lobbying or political activity of any sort by NAMBLA or anyone working on its behalf, including Melzer. Only one person, a former staff member of the Assembly Codes Committee, has a

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greater emphasis to NAMBLA's commitment to publicize its goals:

[NAMBLA] is both political and educational. We work to organize support for boys and men who have or desire consensual sexual and emotional relationships and to educate society on their positive nature. We speak out against the oppression endured by men and boys who love one another and support the right of all people to consensual intergenerational relationships. . . . Our spokespeople raise awareness . . . in the media and academia, before community groups, and among the general public. . . . NAMBLA condemns sexual abuse and all forms of coercion. But we insist there is a distinction between coercive and consensual sex. . . . NAMBLA calls for the empowerment of youth in all areas, not just the sexual.

See the January-February 1993 issue, p. 2, under the headline "Where We Stand." The wording of NAMBLA's policy has changed somewhat at various times over the years.

recollection of NAMBLA: he believes that NAMBLA might have written to the Committee once, several years ago, in opposition to proposed legislation strengthening laws against child pornography. Melzer himself has written in a letter to the editor of *New York Newsday* that "[t]he assertion . . . that NAMBLA lobbies in Washington is completely false and with absolutely no basis in fact."<sup>37</sup>

*Melzer by his writings for and organizational support of NAMBLA has publicly and unequivocally promoted pedophilia.*

In articles published in the *NAMBLA Bulletin*, Melzer by his own words has vigorously sought publicity and donations for NAMBLA. When these articles are considered in conjunction with his other activities promoting pedophilia, there can be no legitimate question that Melzer has personally and publicly supported pedophilia.<sup>38</sup>

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<sup>37</sup>*Newsday*, April 28, 1987.

<sup>38</sup>For example, in an article entitled, "Fund raising appeal; Thanks--and stay generous" on page 3 of the January-February 1992 issue of the *Bulletin*, Melzer demonstrated his commitment to recruiting pedophiles. He expressed support of "NAMBLA's strategy of committing a good deal of financial resources to seeking new members." The article concluded:

A continued and vigorous ad campaign must be maintained to keep NAMBLA vital and growing.

We're moving, we're growing, and we're making a difference. Be part of this historical struggle. Send your contribution now and be proud of your commitment [to NAMBLA].

In a similar vein Melzer wrote an article entitled "Keeping Up the Barricades" in the March 1992 issue of the *Bulletin*, where he asked for donations to help NAMBLA publicize its agenda. In part, he stated:

We [NAMBLA] have only a few people able to confront hostile [television news] cameras. Our ability to move them around by providing them transportation helps us present an image of strength to the hostile hordes. . . . Continued responses to media abuse will have to be made . . .

. [O]ur message is unwavering and our mission steadfast. We are the good guys.

Explicitly acknowledging the persuasiveness of Melzer's entreaties, a writer to the *Bulletin* in the May 1992 issue, p. 15, bequeathed "the bulk of [his] estate" to NAMBLA.

Consistent with his efforts to obtain public notice for NAMBLA, Melzer has also placed himself in public view, identifying himself as a NAMBLA officer, organizer and editor as well as a teacher at the Bronx High School of Science.<sup>39</sup> His name has appeared regularly under the *Bulletin's* masthead as a member of its editorial staff. Unlike many *Bulletin* writers, including some staff, he is clearly identified by his full name. As noted in the April 1993 issue of the *Bulletin*, he and some other NAMBLA members "have for years been open about their involvement in NAMBLA and have written under their real names in the *Bulletin* and even appeared on TV . . ." <sup>40</sup> At the national level Melzer has on at least three separate occasions been a member of NAMBLA's "Steering Committee," which is NAMBLA's national governing body, responsible for determining the organization's strategy and the editorial policies of the *NAMBLA Bulletin*.<sup>41</sup> He has served at least

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<sup>39</sup>Melzer identified himself as a member of NAMBLA and as a teacher at Bronx Science during his testimony for the defense in the criminal trial of Edgar Bagarozzy, Bronx County indictment number 280 of 1985.

<sup>40</sup>Melzer has directly acknowledged being a NAMBLA officer, member, and *Bulletin* editor. In addition, it appears that he has helped issue press releases and develop a sales department for the organization. See page 2 of the March-April 1982 *Bulletin* and the January-February 1987 issue. The July-August 1992 issue on page 3 identifies Melzer as having represented NAMBLA at a conference of pedophiles in the Netherlands. We have found no indication other than the above quote that Melzer has appeared on television in support of NAMBLA. See also the June 1993 issue of the *Bulletin*, containing an article written by Melzer about his having been identified as a NAMBLA activist by WNBC's reports.

<sup>41</sup>This information is contained in NAMBLA's constitution and in the June 1992 *Bulletin*, pp. 3-4.

once as national treasurer, NAMBLA's single most important position.<sup>42</sup> Melzer has also admitted acting as an agent of the Steering Committee.<sup>43</sup> Locally, Melzer has served as president of the New York City chapter of NAMBLA and has also chaired chapter meetings.<sup>44</sup>

Melzer cannot legitimately claim that he has participated in NAMBLA *in spite of* its official positions. The record shows that Melzer has distanced himself from NAMBLA on only one occasion, not because he disagreed with the organization's

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<sup>42</sup>See the FBI's report entitled *North American Man Boy Love Association*. See Melzer's testimony in the trial of *People v. Bagarozzy*, Bronx County Indictment number 280 of 1985, and NAMBLA's constitution which lists its national officers in the following order: treasurer, membership secretary, corresponding secretary, recording secretary and international secretary. See also the January-February 1987 issue of the *Bulletin*. According to NAMBLA's constitution, the Steering Committee is comprised of the national officers, official spokespersons, and representatives from each local chapter.

<sup>43</sup>In an article from the *NAMBLA Bulletin*, entitled "NAMBLA Will See Its Files," which appeared in the second WNBC broadcast, Melzer wrote: "On instructions from the Steering Committee I applied for NAMBLA's New York City police files."

<sup>44</sup>See the FBI report, *op. cit.*, pp. 67-68. Local law enforcement sources have reported that Melzer was observed presiding over NAMBLA meetings in the early to mid 1980's. One of the WNBC reports shows Melzer at a chapter meeting held in a public space at the Citicorp building in Manhattan. Announcements of chapter meetings, which had been open to the public, are no longer listed in the *Bulletin* as a result of what NAMBLA perceives as harassment resulting from the WNBC newscasts.

goals but because, he claimed, it was not vigorously enough promoting them.<sup>45</sup>

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<sup>45</sup>See "Taking a Leave of Absence" in the March-April 1982 issue of the *NAMBLA Bulletin*.

**V. EDUCATIONAL CONSEQUENCES  
OF MELZER'S PUBLIC ADVOCACY OF PEDOPHILIA  
AND HIS PUBLIC PROMOTION OF THE SEXUAL ABUSE OF CHILDREN**

The students at the Bronx High School of Science should be considered first in any attempt to resolve the differing interests of the affected parties in this case. Students are the ultimate, direct consumers of the educational services provided by the Board of Education, and are required to receive these services until the age of sixteen. They, along with their parents, have the greatest stake in being assured of a safe, efficient, effective and orderly educational environment.<sup>7</sup> Melzer poses a clear threat to this environment, affecting not only the students in his classes but all the students at the Bronx High School of Science, their parents, the school staff and administration, and the entire school system.

**1. Risks to students' welfare**

Melzer's admitted attraction to young people of the very ages that he teaches, his willingness to act on that attraction in the Philippines while apparently travelling as a teacher for an educational conference, his unabashed and unexplained assertion to the former Inspector General that his involvement with NAMBLA affected his performance as a teacher, and his consistent public promotion of pedophilia, demonstrated through his long-time leadership role in NAMBLA and its official publication, pose substantial risks to students' welfare.<sup>8</sup> These risks include an obvious direct danger to students' physical safety from his failure to control his behavior. In addition, there is a clear basis for concern that he will not discharge his responsibility as a teacher to affirmatively protect young people's

interests--for example, young people's right to be free from sexual abuse from any source--because as a pedophile he has supported positions clearly at odds with their interests.<sup>46</sup> It is difficult to believe that Melzer would report to the proper authorities that children were being sexually abused or harassed in an purportedly consensual relationship. These risks should not be minimized because Melzer's sexual misconduct with a young boy or boys occurred a number of years ago beyond the grounds of Bronx Science. His past sexual misconduct is relevant as a significant part of his consistent conduct promoting pedophilia since the early 1980's; and it demonstrates convincingly his continued sexual attraction towards young people.

The available documentary evidence of his association with students in extra-curricular activities at Bronx Science adds cause for concern. Melzer has been an adviser to such groups as the bicycle club, the physical science club, the physical science journal and the computer programmer's forum. Disturbingly, the composition of students participating in extra-curricular activities that he has advised differed noticeably from what existed immediately before and after his tenure as adviser: in general, under Melzer there were almost no female students and there appeared to be a much higher proportion of younger students.<sup>47</sup>

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<sup>46</sup>Concerns about Melzer's ability to report sexual abuse are developed further in sub-section three, below.

<sup>47</sup>These conclusions are based upon a review of the photographic record contained in Bronx Science yearbooks for the past fifteen years. Melzer appears in photographs of: the 1991-92 Physical Science Club with five students, all male; the 1989-90 Computer Programmer's Forum with eight students, all male; the 1988-89 Computer

Melzer by his conduct as a pedophile has placed at risk the educational achievement of Bronx Science students and the excellence of Bronx Science's academic program, as we shall discuss the next sections. In making his pedophilia and his promotion of pedophilia so public for so long, he either has ignored these apparent risks for students or has consciously disregarded them.

## **2. Damage to parents' confidence in and cooperation with the school system because of legitimate concern about Melzer's fitness to teach**

As a teacher Melzer can and should be held to high standards of conduct and character, applicable outside as well as inside the classroom.<sup>9</sup> High standards are appropriate both because of the unique opportunities that Melzer has as a teacher to influence young people in his care and because of young people's greater vulnerability to being influenced.<sup>48</sup> Melzer's conduct, character and fitness to be an educator of young

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Programmer's Forum with thirteen students, all male; the 1981-82 Physical Science Journal with twenty-five students, two of whom are female; the 1981-82 Cycling Club with ten students, two of whom are female; and the 1980-81 Bicycle Club with eight students, all male. No information other than that contained in the yearbooks was available at Bronx Science about the particular members of the activities. During this same period of time the general ratio of male to female students at the school varied from approximately 60:40 to 53:47. We recognize that yearbook photographs might not provide completely accurate records of all the members of the activities. We have come across no direct evidence that Melzer has ever overtly acted in an inappropriate manner with his students.

<sup>48</sup>E.g., see *Matter of Goldin, id.*; *Matter of Frontier, id.* at 342, citing *Ambach v. Norwick*, 441 U.S. 68; *Beilan v. Board of Education*, 357 U.S. 399; *Matter of Nino v. Yonkers*, 43 N.Y.2d 865 (1978); *Matter of Bott v.*



people are legitimate concerns of Bronx Science parents because parents have a legal as well as a moral responsibility to participate in their children's education and to ensure their welfare.<sup>49</sup>

Parents are understandably alarmed by Melzer's promotion of pedophilia, his self-professed sexual desire for "boys up to the age of about 16" and by his having acted on those impulses, even though there is no evidence of any complaint of sexual misconduct against him by his students. The school system has a responsibility to consider parents' concerns because parents are intimately a part of the educational process; their confidence in and cooperation with educators are

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*Board of Education*, 41 N.Y.2d 265 (1977). The nature of a teacher's role in the mission of the school system distinguishes this case from that of the police clerk in *Rankin v. McPherson*, 107 S.Ct. 2891 (1987).

<sup>49</sup>New York State Education Law, section 3212. Parents can lose legal custody of their children for failing to provide for their education. See the New York State Family Court Act. Parents can also be arrested and criminally prosecuted for neglecting their duty to provide for their children's education. See section 260.10 of the New York State Penal Law. Parents therefore cannot be considered simply as members of the general public who, according to the court in *Flanagan v. Munger*, 890 F.2d 1557 (10th Cir.1989), are not entitled to exercise a "heckler's veto." In accord with common sense, the law provides that "[i]mmoral character, whether or not manifested by criminal conduct, is a statutory ground for disciplinary removal of a teacher separate and distinct from that of conduct unbecoming a teacher . . ." *Matter of Ellis v. Ambach*, 124 A.D.2d 854, 856 (3d Dept.1986). See also Education Law sections 2590-j(7)(b), 2573(6) and 3020, setting forth various grounds for disciplining teachers. (Only the last two sections are applicable to high school teachers.)

vital to their children's educational success.<sup>50</sup>

In addition to the risks discussed in the section immediately above, it can be said that Melzer's poor judgment in promoting pedophilia provides ample reason for parents to fear for their children's welfare and educational progress. By associating himself so intimately and openly with the sexual and emotional abuse of young people--for example, taking a leadership role in a news bulletin that publishes detailed advice on how adults can sexually seduce children, including young people of the same ages as those whom he teaches and supervises--he has elevated his personal interests above those of students, their parents and his profession.

Not surprisingly, many parents now say that they will not allow him to have any more contact with their children.<sup>51</sup> From our discussion with representatives of the Parents' Association, the staff of Bronx Science and the Bronx High School Superintendent, it is clear that in large numbers parents will seek to remove their children from his classes if their urgent requests for Melzer's removal from the school are not granted.<sup>52</sup> Because of the special status of Bronx Science in the school system and the high level of commitment and organization by the parents of its students, it seems clear that parents and students will stay and fight for

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<sup>50</sup>As already noted, education until the age of sixteen is compulsory. This obligation falls not only on students but also on their parents. See, New York State Education Law, sections 3205, 3210 and 3212.

<sup>51</sup>See, e.g., *Matter of Bentley*, 11 Educ.Dept.Rep. 236 (1972) where parents threatened to boycott the classes of a teacher for conduct which later subjected him to discipline by the school board.

<sup>52</sup>The three other science high schools are already enrolled beyond their capacities.

Melzer's removal or, at the very least, for Melzer's removal from unsupervised contact with students. For its part, the school system will have no practical choice but to comply sooner or later with parents' requests to re-assign their children from Melzer to other teachers. It is impossible to believe that school officials would seek to have boycotters declared truant and then to obtain court orders to compel them to attend Melzer's classes.<sup>53</sup>

It cannot reasonably be expected that parents will overlook Melzer's conduct and character as a pedophile. WNBC's televised series of reports was viewed in early March by millions of viewers, making the Bronx Science community unavoidably aware that Melzer is an active pedophile. The March 22, 1993 issue of *The S.O. Newsletter*, issued by Bronx Science's student organization to the student body, published two articles on Melzer and his advocacy of pedophilia.<sup>54</sup> Administrators of Bronx Science and the school district have received many

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<sup>53</sup>This situation at Bronx Science differs significantly from the educational environment at City University, described in *Levin v. Harleston*, 770 F.Supp. 895 (S.D.N.Y.1991), *aff'd in part, vacated in part*, 966 F.2d 85 (2d Cir.1992). In that case, City University's program already allowed students to choose instructors other than Levin, but the University nonetheless established and publicized a specific alternate class for his students, an action that the court found was intended to and did in fact stigmatize Levin for his unpopular ideas on the genetic superiority of whites as a group.

<sup>54</sup>One writer criticized the school's administration for in effect condoning pedophilia by failing to condemn Melzer. The other writer argued that no laws had been broken and that NAMBLA is free to disagree with the law.

complaints about Melzer from concerned parents.<sup>55</sup> Representatives of the school's large, active and well organized Parents' Association attended a meeting of the Central Board of Education in April and urgently requested Melzer's removal. The Parents' Association and the Alumni Association are evaluating what specific actions they will sponsor in September if Melzer returns to Bronx Science classrooms.<sup>56</sup>

### **3. Impairment to Melzer's effectiveness in the school**

Melzer's conduct and public promotion of pedophilia have significantly impaired his ability to perform fully his regular duties as a teacher.<sup>10</sup> In addition to the fundamental disruption that he has caused to the confidence of parents and students, his ability to fully and effectively perform the full range of his responsibilities as a teacher and school employee has significantly been compromised.

If Melzer were to return to Bronx Science at the start of the new school year, it would be clear that the circumstances of his employment have changed dramatically. He would be unable to teach each and every student regularly assigned to him since, in reasonable response to his pedophilia and misconduct, many parents and students would boycott his classes. Even students who might remain in Melzer's classes would be hurt. Melzer's unsuitable character for

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<sup>55</sup>We should note that there is no evidence that school officials in any way contributed to the substance of WNBC's investigation.

<sup>56</sup>See pages 1 and 4 of the April 1993 issue of the *Science PA Bulletin*.

teaching young people<sup>57</sup> and the disregard that he has demonstrated for them by being a public advocate of pedophilia diminish whatever effectiveness he has had as an instructor and adviser. Many students can be expected to avoid Melzer, especially for individualized tutoring and counselling.<sup>58</sup> As a result, students assigned to receive instruction under him will not have the full benefit of a teacher from whom they can freely seek assistance, especially outside regular class time.

Melzer's outspoken support for pedophilia undermines his ability and the school's and parents' confidence in his ability to fulfill his duty as an employee of the Board of Education to report fully and faithfully any and all information about sexual misconduct and abuse involving students at or outside school premises.<sup>59</sup> (Melzer's attitude towards this requirement was suggested by a remark that he made at a NAMBLA meeting to another participant who is also an employee of the Board. Melzer asked, "Are you tenured?" The other employee said that he was

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<sup>57</sup>Unlike the facts in *Rankin, id.*, Melzer's conduct, displayed publicly and persisting for over thirteen years, is clear evidence of a character trait making him unsuitable for his present job.

<sup>58</sup>For example, the 1993 study commissioned by the American Association of University Women Education Foundation, already cited, reports that half of students who are sexually harassed avoid the harasser. *Op. cit.*, pp. 17-18. Similarly, it is reasonable to anticipate that young people concerned about being subjected to improper behavior or simply repulsed by Melzer's public promotion of pedophilia will seek to have as little contact with him as possible.

<sup>59</sup>See the resolution of the Board of Education dated May 6, 1991.

not. Melzer replied, "So you lay low then."<sup>60</sup>) Similarly, his promotion of pedophilia also appears to be incompatible with his duty to report every instance of neglect or abuse of children under the age of seventeen that comes to his attention, as State law requires.<sup>61</sup> It is therefore fair to conclude that his ability to perform these

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<sup>60</sup>The conversation appeared on the third WNBC broadcast. The other employee appears only to be a member of NAMBLA and has not himself publicly advocated pedophilia. There is no indication that this employee has acted improperly towards students at or outside school grounds or that he has broken any laws.

<sup>61</sup>See section 413 of the New York State Social Services Law. The risk to young people is also confirmed by Melzer's angry denunciations of laws containing distinctions by age and of the enforcement of such laws. (For example, the New York State Family Court Act, by its extensive provisions allows for special court-ordered supervision of young people, including confining them to detention facilities. State criminal law, in general, immunizes young people under the age of sixteen from liability for criminal penalties, with some exceptions for violent crimes. Young people sixteen and older but less than nineteen are eligible for leniency in sentencing and can have records of their convictions sealed from the public. Statutes defining various sexual offenses typically distinguish among victims under the ages of seventeen, fourteen and eleven, with increasingly higher penalties.) While he is of course entitled to criticize laws and law enforcement as much and as often as he wants, his statements and attitude strongly suggest an inability or unwillingness to cooperate with authorities in the reporting and investigation of sex crimes against minors even though he has a specific, affirmative obligation to do so in his role as a teacher. Two of his articles, "Police Infiltrator" and "Police Infiltrator: Part II," for example, sharply criticize efforts to investigate and prosecute NAMBLA members for having sexual relations with minors. (See, respectively, the December 1986 and the January-February 1987 issues.) Melzer has also warned readers of the *Bulletin*, in an article entitled "Entrapment of the Month," which he conceded having written, about investigative

essential tasks of his job has significantly been impaired.

#### 4. Disruption to the internal operations of Bronx Science

Melzer has created and will create significant direct disruption to the normal internal operations of the Bronx High School of Science. At the outset, we note that his diminished

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techniques employed by law enforcement to uncover criminal activity, and he has offered advice about how those techniques can be countered. He has testified, in his capacity as NAMBLA's treasurer, on behalf of a NAMBLA member accused, and ultimately convicted, of sodomizing a young boy. See *People v. Edgar Bagarozy*, Indictment 280 of 1985. (The chief subject of Melzer's direct testimony related to the date that a particular issue of the *NAMBLA Bulletin* had been published. Bagarozy identified himself in the *Bulletin* under the pseudonym of Richard Boyer. The Appellate Division overturned Bagarozy's conviction on two counts of sodomy and ordered a new trial that resulted in a conviction of one count of sodomy. See *People v. Bagarozy*, 132 A.D.2d 225 (First Dept. 1987); 152 A.D.2d 478 (First Dept. 1989).) Called as a defense witness, Melzer readily identified himself as a teacher at the Bronx High School of Science for nineteen years, a member of NAMBLA since about 1980, a member of the editorial staff of the *Bulletin*, and for an unspecified period of time, NAMBLA's treasurer. Melzer later characterized the case as a persecution, complaining that the prosecution caused the defendant's victims to suffer unnecessarily by bringing them to court to testify. He expressed no concern at all about the damage done to the victims by the defendant. See "Police Infiltrator: Part II" in the January-February 1987 *Bulletin*. Additional evidence of Melzer's recalcitrance can be found in the record of his 1985 interview at the office of the Inspector General of the Board of Education. He refused to answer most questions, claiming in part that his replies would take too much time. Later commenting at a NAMBLA meeting on the interview, Melzer laughed and said, "They couldn't find anything to nail me with." (This conversation was recorded by WNBC.)

capacity as a teacher has disrupted the school's administrative operations. For example, in a reasonable response to the serious allegations of Melzer's misconduct, the Bronx Superintendent of High Schools has directed Melzer to report at the start of this school year to the district office instead of to Bronx Science, a directive which has required Bronx Science to employ another teacher in Melzer's place. In addition, since March of this year Bronx Science has had to allocate staff to escort Melzer during his visits to the school; Melzer was on a sabbatical leave during the 1992-93 school year, but his project required his occasional presence at Bronx Science.

If Melzer were to return to Bronx Science, disruption affecting the staff at Bronx Science can be anticipated.<sup>11</sup> Teachers at Bronx Science, already with large enrollments in their classes, will be burdened by increases from incoming transfers of Melzer's former students. Melzer, with few if any students, would then inefficiently be occupying scarce classroom and office space at Bronx Science.

Administrative difficulties in giving Melzer proctoring and building assignments can be foreseen. For example, teachers are obliged regularly to supervise students in the more public parts of the school, such as hallways and the cafeteria. Melzer's ability to undertake such assignments has been impaired. If the school administration were then to limit or even abolish Melzer's administrative duties, other teachers would be required to assume more work, arguably providing cause for grievance proceedings.<sup>62</sup> Similarly, if Melzer were assigned to teach only

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<sup>62</sup>The City's contract with the teachers requires the fair and equitable apportionment of administrative assignments among the entire staff of each school.



elective courses so that students could have some control over their exposure to him, other teachers in his department, deprived of the normal rotation of elective courses, would be disadvantaged.<sup>63</sup>

Finally, if the school system were not to remove Melzer because of the problems that he has caused, students' educational programs will surely be disrupted in September as parents seek changes in their children's physics and science programs. The administrative burden on the school of re-scheduling students' programs will be considerable.

## **5. Summary**

In summary, Melzer has undermined parents' confidence that their children will be safe at school, which by itself alone is a significant disruption of the school's fundamental mission. He has lost the ability to perform effectively and efficiently the full range of his duties as a teacher. Moreover, he has disrupted normal internal operations of the Bronx High School of Science, further impeding the school's ability to effectively educate its students. If he returns to the school, he will be the cause of even greater disruption.

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<sup>63</sup>Ironically, Melzer might gain the most from the turmoil that he has caused. If he remains at Bronx Science, his teaching responsibilities and out-of-class assignments will drastically decrease, without a corresponding decrease in his salary. He will have only students if he has any at all who want to have him. And by his continued presence at Bronx Science he will generate even more publicity for pedophilia, further impeding the school's operations.

## VI. CONSTITUTIONAL PRINCIPLES AFFECTING MELZER'S SPEECH AND ASSOCIATION

Melzer's continuing course of conduct over the past fifteen years provides a compelling basis for recommending his removal from the classroom. It seems perfectly logical that no school system should be forced to entrust an admitted pedophile, who has acted on his own urges and actively promoted sexual relations between other adults and children, with the safety and welfare of the children in its care. An obvious corollary is that parents should not be forced to entrust their children to such an individual.

The question is raised, however, whether in removing Melzer from the classroom, the Board of Education would improperly infringe on his constitutional right of free speech.<sup>12</sup> This office is independent of the Board of Education and does not, of course, give it legal advice. We consider these issues, however, because no government office should recommend action it feels to be unconstitutional.

In reviewing these issues, it is important to understand that disciplinary action against Melzer might not necessarily implicate constitutional concerns. We feel, as we outline later in this report, that Melzer may be removed from the classroom because he poses a danger to the welfare of children in his care. This analysis focuses on his admitted sexual desire for children, and on his having acted on that desire. Melzer's recent promotion of pedophilia is relevant to this analysis only insofar as it bears on the currency of the danger. We also feel, however, that

Melzer's active promotion of pedophilia provides an independent basis for removing him from the classroom. This clearly requires review of the constitutionality of such action.

### **1. Legal principles applicable to Melzer's promotion of pedophilia**

There are two fundamental interests at stake to be considered in evaluating Melzer's promotion of pedophilia. Melzer has the critical constitutional right of free speech, a right to which government must be particularly sensitive in the area of education. The Board of Education, on the other hand, must educate one million children entrusted to its care. It is essential in filling that function that the Board maintain the confidence of parents that it will not only educate their children but also look after their safety and welfare. Any constitutional analysis in this case must balance these fundamental interests.

As the Supreme Court has said, "The problem in any case is to arrive at a balance between the interests of the teacher, as a citizen, in commenting upon matters of public concern and the interest of the State, as an employer, in promoting the efficiency of the public services it performs through its employees." <sup>13</sup>

In striking that balance, courts first evaluate the employee's speech and other expressive conduct to determine whether and to what extent it involves an issue of "public concern."<sup>64</sup> The more the speech involves substantial issues of public concern, the greater the constitutional interest in speaking free of disciplinary consequences. The courts then seek to determine whether the speech was in fact

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<sup>64</sup>The seminal case in this regard is *Pickering, id.* See also *Connick v. Myers, id.*

a substantial motivating factor in the disciplinary action or dismissal.<sup>65</sup> If the speech was a motivating factor and if there was no independent and sufficient basis for the action,<sup>66</sup> the courts then examine the school's interest in disciplining the employee, and balance it against the employee's speech interest.

*Regarding speech touching on public concern*

Evaluating the extent to which an employee's speech touches on public concern is of critical importance in balancing the fundamental interests involved. The term "public concern" has evolved into something of a term of art, and a full understanding of its import requires knowledge of its derivation. Courts have long recognized the special importance of free speech in public affairs because of the vital contribution such speech makes to the political and social well-being of a democracy. As the Supreme Court has said, "speech concerning public affairs is more than self-expression; it is the essence of self-government."<sup>67</sup> Accordingly, it occupies the "highest rung of the hierarchy of First Amendment values."<sup>68</sup>

Thus, in evaluating whether speech is of "public concern," courts have

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<sup>65</sup> *White Plains Towing Corp. v. Patterson*, 991 F.2d 1049 (2d Cir.1993); *Melton v. City of Oklahoma City*, 879 F.2d 706 (10th Cir.1989); *Jeffries v. Harleston*, 92 Civ. 4180 (KC), slip op. (S.D.N.Y. Aug. 4, 1993).

<sup>66</sup> See *Connick v. Myers, id.*; *Mt. Healthy City School District Board of Education v. Doyle*, 429 U.S. 274, 286 (1977).

<sup>67</sup> *Garrison v. Louisiana*, 85 S.Ct. 209, 215-16 (1964); see also *Piesco v. City of New York*, 933 F.2d 1149, 1157 (2d cir. 1991)("speech critical of government is precisely the kind of speech the first amendment was designed to protect.")

<sup>68</sup> *Carey v. Brown*, 100 S.Ct. 2286, 2293 (1980); *Connick v. Myers, id.*, at 1689.

typically analyzed the extent to which it sought to influence the outcome of public issues. In the seminal case of *Pickering v. Board of Education*, for example, the Supreme Court overturned the dismissal of a teacher who had criticized a school board's allocation of funding for athletics at the expense of academics. Educators who have raised questions about the advisability of a dress code for teachers, four-year status for a college, or multi-cultural curricula have similarly been found to be protected against dismissal by their schools.<sup>69</sup> Even where the employee's remarks did not relate to the workplace at all, however, the Supreme Court has begun its analysis by seeking to establish whether the remarks related to a public concern.<sup>70</sup>

However, an employee's speech does not become an issue of public concern just because it could under some circumstances be expressed in a manner that would be of general interest to the public.<sup>71</sup> Rather, "[w]hat is *actually said* on that topic must itself be of public concern."<sup>72</sup> The content, form and context of the questioned speech should be considered,<sup>73</sup> along with the point of the speech and

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<sup>69</sup> *Perry v. Sindermann*, 92 S.Ct. 2694 (1972) (college teacher's opinion on whether the school should be elevated to four-year status); *Mt. Healthy City Board of Education v. Doyle*, 97 S.Ct. 568 (1977) (speech regarding a dress code for teachers); *Jeffries v. Harleston*, 820 F.Supp. 741 (S.D.N.Y. 1993) (department head's controversial speech in response to and as part of a debate over multicultural curricula).

<sup>70</sup> *Rankin*, *id.*

<sup>71</sup> *Connick*, 461 U.S. at 149 n.8, 103 S.Ct. 1691 n.8.

<sup>72</sup> *Melton*, *id.* at 713-14, quoting *Wilson v. City of Littleton*, 732 F.2d 765, 769 (10th Cir.1984).

<sup>73</sup> *Connick*, U.S. at 147-48, S.Ct. at 1690-91.

the purpose of the speaker.<sup>74</sup> If the employee's speech is found to have at least "touched upon matters of public concern"<sup>75</sup> it then becomes necessary for a court to evaluate the extent to which public concern is implicated since the greater the public concern, the greater becomes the employer's burden of proving that its interests outweigh its employee's.<sup>76</sup>

The most troubling articles Melzer wrote or published in the *NAMBLA Bulletin* are quite different in their nature from most forms of speech examined through the *Pickering* analysis. In none of the articles that we have cited does Melzer or the *Bulletin* state positions on school policy. In several instances, the *Bulletin* simply offers *advice* to readers in seducing and having sexual relations with children. It is not easily seen how this advances any public debate. The January-February 1993 *Bulletin*, which we discussed earlier, advises its readers to use "well placed sexual jokes or comments" and to leave pornographic magazines around "where he [the desired boy] is sure to find it" as a means of identifying vulnerable children. The same article treats a camp counselor's reminiscences of having sex with a nine-year old child entrusted to his care as a sentimental memoir. Another article advises how to stroke a child's genitals. Advice on seducing and sexually abusing children, or memoirs of such abuse, seems to be of little or no public concern, as that term

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<sup>74</sup>*Roth v. Veteran's Administration*, 856 F.2d 1401, 1406 (9th Cir.1988), citing *Czurlanis v. Albanese*, 721 F.2d 98 (3d Cir.1983).

<sup>75</sup>*Connick*, U.S. at 154, S.Ct. at 1693-94.

<sup>76</sup>*Connick; Piesco v. City of New York*, 933 F.2d 1149 (2d Cir.1991), *cert. denied*, 112 S.Ct. 331 (1991).

has been refined through constitutional analysis. Such material is however quite dangerous to children and when published by a teacher, obviously undermines the confidence that parents and other educators have in the teacher's fitness to perform his duties.

Other articles promoting either child pornography or child prostitution, while offensive, at least take a position on an arguably public issue. Even though asserting, as we do below, that the school's interests in the welfare of their students far outweigh Melzer's in promoting child pornography or prostitution, his views in these areas do touch on public concern in seeking revision of existing laws. Similarly, to the extent that through his writing and publishing Melzer has associated himself with criticism of consent laws regarding sexual relations and perceived media and law enforcement excesses in the area, he has touched on issues of public concern.

Melzer's declaration identifying himself as a "boy lover" who suffered from "years of psychological oppression" because of his pedophilia, however, and who gained a greater sense of his identity through membership in NAMBLA<sup>77</sup> does not easily fit into a category of public debate. His public advocacy on behalf of NAMBLA and pedophilia considered with the absence of political activity in New York State and Washington, D.C. by Melzer or NAMBLA on behalf of the "empowerment of youth" and against the "oppression of boys," as the organization

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<sup>77</sup>See the March-April 1982 *Bulletin*, op. cit.

characterizes its agenda<sup>78</sup> is limited in appeal and consequence to other pedophiles and readers of the *NAMBLA Bulletin*, a publication whose chief purpose is admittedly the promotion of pedophilia.

In summary, much of the material promoting pedophilia written by Melzer or published with his editorial assistance, is of little or no public concern in the constitutional sense. These materials, with their advice on seducing and sexually abusing children, are of sufficient danger to justify Melzer's removal from the classroom by themselves. Other materials written or published by Melzer, such as those criticizing existing child pornography or child prostitution or sexual consent laws, do bear on public concern.

*Regarding speech as motivating factor in disciplinary action*

We believe that the articles in the *NAMBLA Bulletin* offering advice in seducing and sexually abusing children, as well as other articles promoting child pornography and child prostitution weigh heavily against Melzer's fitness as a teacher of children. We state unequivocally that those activities are a substantial motivating factor in our recommendation.

As we note in our recommendation below, we feel that Melzer's entire course of conduct demonstrates the danger he presents to the safety and welfare of his students, and that this forms an independent and sufficient basis for removing him from contact with children. In this analysis, his writings in the *Bulletin* are relevant only insofar as they demonstrate that his sexual desire for children of

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<sup>78</sup>See Section IV, subsection 2 of this report and NAMBLA's constitution and position papers in the appendix.



the same ages as those whom he teaches has not waned since his having acted on his urges in the Philippines in or around 1983. Removing him from contact with children on this basis, in our view, does not implicate constitutional principles.

*Regarding the school's interest in the welfare of its students, the confidence of their parents, and the effective performance of the school's educational function*

If the employee meets the "public concern" and "motivation" criteria, the balancing of interests begins and the employer is then required to articulate its own interests in delivering its services efficiently, effectively and without disruption. It must demonstrate that actions against the employee are reasonable and necessary for the effectiveness, efficiency and integrity of its mission and its operations.<sup>79</sup>

The Supreme Court has clearly recognized the governmental employer's considerable interests in this regard:

the Government, as an employer, must have wide discretion and control over the management of its personnel and internal affairs. This includes the prerogative to remove employees whose conduct hinders efficient operation and to do so with dispatch. Prolonged retention of a disruptive or otherwise unsatisfactory employee can adversely affect discipline and morale in the work place, foster disharmony, and ultimately impair the efficiency of an office or agency.<sup>80</sup>

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<sup>79</sup>See, *Connick v. Myers*, 461 U.S. 137, 150; 103 S.Ct. 1684, 1691-92 (1983); *Rankin, id.* at 2901 (Powell, J., concurring); *Pickering, id.*; *Flanagan, id.*; *Jones v. North Carolina Prisoners' Labor Union*, 97 S.Ct. 2532 (1977); *Piesco, id.* at 1157; *Roth, id.* at 1407; *McMullen v. Carson*, 754 F.2d 936 (11th Cir.1985).

<sup>80</sup>*Connick*, U.S. at 151, S.Ct. at 1692, citing *Arnett v. Kennedy*, 416 U.S. 134, 168, 94 S.Ct. 1633, 1651 (1974).

In addition, "[w]hen close working relationships are essential to fulfilling public responsibilities, a wide degree of deference [by courts] to the employer's judgment is appropriate."<sup>81</sup> Similarly, "[t]he burden of caution employees bear with respect to the words they speak will vary with the extent of authority and public accountability the employee's role entails."<sup>82</sup> The effect of an employee's speech on his ability to perform his duties is therefore very significant in deciding whether the employer's interests should prevail over the employee's.<sup>83</sup>

Some disagreement exists over whether and to what extent the employer must demonstrate that disruption to its operations has actually occurred. While the employer might be required to prove only that disruption is reasonably likely to result from the employee's speech, it would be more prudent to anticipate that some showing of actual disruption will be required.<sup>84</sup> At the very least, even if

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<sup>81</sup>*Connick*, U.S. at 151-52, S.Ct. at 1692-93.

<sup>82</sup>*Rankin*, *id.* at 2900.

<sup>83</sup>See *Pickering*, *id.* at 572; *Rankin*, *id.* at 388; *Dartland v. Metropolitan Dade County*, 866 F.2d 1321, 1324 (11th Cir.1989).

<sup>84</sup>See *Connick*, *id.*; *Jones*, *id.*, *Brennan, J., dissenting*; *Mings v. Dept. of Justice*, 813 F.2d 384 (D.C. Cir.1987); *Dartland v. Metropolitan Dade County*, 866 F.2d 1321 (11th Cir.1989); *Zamboni v. Stamler*, 847 F.2d 73 (3rd Cir. 1988), *cert. denied*, 109 S.Ct. 245 (1988); *Fiorillo v. U.S. Dept. of Justice*, 795 F.2d 1544(D.C. Cir.1986); ; *McMullen v. Carson*, 754 F.2d 936 (11th Cir.1985); *Waters V. Chaffin*, 684 F.2d 833 (11th Cir. 1982). In *Connick*, for example, a District Attorney properly dismissed one of his assistants, anticipating that the assistant's actions would disrupt relationships among his staff. The Second Circuit commented on *Connick*, stating

significant actual disruption need not be demonstrated, the employer's interests should be more than an "undifferentiated fear or apprehension of disturbance."<sup>85</sup>

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that "the District Attorney and his first assistant's unsupported claims, that the [employee's actions] interfered with working relationships [at the District Attorney's office], was [sic] sufficient to carry the government's burden of proof." *Piesco, id.* at 151-52; emphasis added. In *Jeffries v. Harleston*, 92 Civ. 4180 (KC), slip op. (S.D.N.Y. Aug. 4, 1993), the Court distinguished *McMullen*--where proof of actual disruption was not necessary--because of the unique requirements of a police department in regulating its employees, and held that in the Second Circuit there must be proof "that the employee's speech actually interfered with the functioning of the government office." *Id.* at 48. However, the Supreme Court has clearly equated government's fundamental responsibility in providing public education with that of its police function. See *Ambach v. Norwick*, 441 U.S. 68 at 76, 99 S.Ct. 1589 at 1594 (1979), citing *Foley v. Connelie*, 435 U.S. 291, 98 S.Ct. 1067 (1978).

<sup>85</sup>*Rothschild v. Buffalo, op.cit.* Since it has been suggested that there must be "a material or substantial interference or disruption in the normal activities of the school," *National Gay Task Force, id.* at 1274, citing *Tinker v. Des Moines School District, id.* at 737, before a school board can restrict the speech of a teacher, it would be prudent for the Board of Education to systematically gather evidence that he has caused some significant actual disruption to Bronx Science and the school system. See also *Melton v. City of Oklahoma*, 879 F.2d 706 (10th Cir.1989); *Roth v. Veterans' Administration*, 856 F.2d 1401 (9th Cir. 1988); *Matherne v. Wilson*, 851 F.2d 752 (5th Cir.1988); *Zamboni v. Stamler, id.*; *Berger v. Battaglia*, 779 F.2d 992 (4th Cir.1985), *cert. denied*, 476 U.S. 1159, 106 S.Ct. 2278 (1986). Courts have disagreed over the relevance of general public opinion to proof of disruption. In *Flanagan v. Munger, id.*, for example, a police chief argued, unsuccessfully, that the operation by high-ranking members of his department of a store that rented a relatively small number of sexually explicit videotapes so offended the public that the public's respect for police in general would diminish, thereby impairing

A teacher plays an especially sensitive role in delivering government services. Parents entrust teachers with the physical and intellectual well-being of their children. Furthermore, parents are mandated by the state to do so. Therefore, the fitness, character and conduct of teachers is of paramount concern both to the

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the effectiveness of police operations. The Court disagreed, stating that disorder caused exclusively by offended members of the public could not be considered as proof of disruption. The Court suggested that, to prevail over the employees, the police department would had to have demonstrated some direct effect caused by the video rentals to the department's internal operations and to the relationships among its staff. *Id.* at 1566. (The Court based its ruling in the alternative on a finding that the police department had failed to prove either actual or potential disruption to its operations.) Similarly, in *Matter of the Board of Education of the Washingtonville Central School District*, 21 Educ.Dept.Rep. 626, 627 (1982), the New York State Commissioner of Education stated: "The existence of community feelings concerning a particular teacher's fitness to serve is not a basis for the determination of . . . charges [of conduct unbecoming a teacher under section 3020-a of the Education Law]." In sharp contrast to the approach in *Flanagan*, other courts have accepted as evidence of disruption reactions by the public. The New York State Court of Appeals has ruled that a teacher's private conduct can legitimately become the concern of a school board "if the conduct directly affects the performance of the professional responsibilities of the teacher, or if without contribution on the part of school officials, the conduct has become the subject of such public notoriety as significantly and reasonably to impair the capability of the particular teacher to discharge the responsibilities of his position." *Matter of Goldin v. Board of Education*, 364 N.Y.S.2d 540, 543-44 (1974). See also *Connick, id.*; *McMullen, id.* This issue may be only academic here since parents of students at Bronx Science, though not the direct consumers of the school's educational services, have a special relationship with the school that distinguishes them from the general public, as we have already discussed.

public and to the schools who serve them.

Applying these principles to this case, it is clear that the Board of Education's interest in removing Melzer from the classroom is overwhelming. Based on the evidence we have produced on Melzer's pedophilia, his having acted on sexual desires for children, and his active promotion of the sexual abuse of children, parents can reasonably fear for the safety of their children if entrusted to his care. Once parents reasonably and considerably fear for their children's safety, the school's ability to perform its educative function is severely damaged.

Even beyond the risk Melzer poses, the articles he wrote or published promoted the sexual abuse of children by others. There is no way of knowing, of course, how many children were sexually assaulted with the assistance of the advice rendered in the *NAMBLA Bulletin*, but the risk of such abuse cannot be said to be remote. No school, and no parent, should be forced to entrust children to the care of a teacher who would willingly, even enthusiastically, be a party to such advice. Significantly, among the cases where disciplinary action against a teacher was overturned on a speech analysis, there was not one in which the remotest claim could be made that the challenged speech could lead to the physical harm of children. The same can hardly be said for Melzer's speech.

As a result of Melzer's conduct, Bronx Science's ability to perform its essential services has already been disrupted. Parents justifiably fear for the safety of their children. Given his positions as proclaimed in the *Bulletin*, Melzer cannot be trusted to report sexual abuse of children by others, as is mandated by New York

State law and Board of Education resolution. The School's principal has already been forced to hire another teacher and has had to adjust his staff's administrative assignments. For example, it has been necessary for members of the school staff who are responsible for monitoring students and visitors at Bronx Science to escort Melzer during his visits to the school in the past school semester.

The further disruption that will occur if Melzer is returned to the classroom is likely to be significant. From the information we have developed, protests and demonstrations by parents can be expected. A boycott of classes is a distinct possibility. It appears that many will demand that their children be pulled from Melzer's classes. This will lead to further administrative hardships for the school, as we discussed in Section V, above.

The Supreme Court has repeatedly said that these cases ultimately require balancing the teacher's interests in the particular speech about a public concern against the school's interest in completing its essential functions. In this case, we believe the balancing comes down squarely on the side of the school. As a result, there is no constitutional impediment to our recommendation that Melzer be removed from the classroom.

## **2. The *Jeffries* case distinguished**

The facts found during this investigation are readily distinguishable from those in the recent case of *Jeffries v. Harleston*.<sup>14</sup> In that case the City University of New York initially contended that it had removed Jeffries, a tenured professor, from his

position as chairman of the Black Studies department because of his alleged administrative incompetence.<sup>86</sup> Jeffries' removal came shortly after a speech he made that had publicly been condemned for being anti-Semitic. Shortly before the speech the University had re-appointed Jeffries as chairman, just as it had re-appointed him consistently during the preceding twenty years. Moreover, in response to condemnations of Jeffries' speech, the University's provost conducted an investigation and found that Jeffries was fit to continue as chairman. However, in spite of the provost's report and in the absence of any evidence of disruption to the operations of Jeffries' department, the college or the City University system, the University's board of trustees replaced Jeffries as chairman.<sup>87</sup> Jeffries sued,

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<sup>86</sup>Ultimately, because of an utter absence of proof of Jeffries' incompetence, the court formulated the legal issue as "whether a University may deny a professor a department chairmanship because of the professor's out-of-class speech, when the professor's speech substantially involved matters of public concern and where the speech caused no actual interference with the functioning of the University." Slip opinion, *id.* at 40. Criticizing the evidence presented by the University as "confused and incompetent," *id.* at 3, the judge noted that the University had argued before him that in removing Jeffries it was motivated by his speech, but it argued before the jury that Jeffries was removed not because of his speech but only because of his administrative deficiencies. *Id.* at 25-26.

<sup>87</sup>Slip opinion, *id.*, at 10-11, 12. Among its responses to the many questions submitted, the jury found that the University had failed to prove that Jeffries' speech had "hampered the effective and efficient operation of the Black Studies Department, the College, or the University." *Id.* at 17. The jury also determined that University officials had acted on a reasonable expectation that Jeffries' speech would disrupt the effective and efficient operation of the University. The judge then ruled that the University failed to prove that the speech had caused any actual

claiming that the University had violated his First Amendment rights. The jury concluded that the University had acted against Jeffries not because of his alleged administrative deficiencies, which in any event had not been demonstrated, but because of the much-criticized speech, which had not in any way impaired the University's operations.<sup>88</sup>

Melzer's case is quite different. First, we urge disciplinary action based directly on Melzer's conduct promoting pedophilia. We make no pretext, as the *Jeffries* court found, that there is some administrative deficiency in his performance. Second, the danger presented by Melzer's sexual desire for children is an independent and sufficient basis for disciplinary action. Third, Melzer has publicly promoted sexual relations between adults and children. In so doing, he is advocating a crime involving violence against *children*.<sup>89</sup> This goes straight to the heart of the school's function, inevitably disrupting it. Parents cannot be expected to entrust their children to the care of those who advocate violence against them.

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disruption and upheld the verdict for Jeffries. *Id.* at 17, 18.

<sup>88</sup>See *Rothschild v. Buffalo*, *op.cit.*, for another example of an employer's use of a pretext to discipline teachers impermissibly.

<sup>89</sup>NAMBLA's *Bulletin*, for which Melzer is an editor and regular contributor, is careful to say it supports only "consensual" sex between adults and children. We view the concept of consent to sexual relations with adults as totally inapplicable to children, as does New York State law. Much of the bulletin's material, such as the letter advising leaving pornography where children are sure to find it as a means to seduction, cited in Section IV of this report, underscores the inappropriateness of applying a consent standard to children.



However disagreeable Jeffries' remarks might have been, there was no suggestion that he advocated criminal action, much less physical or psychological harm to children.

*Jeffries* does not at all support a claim that teachers can never be disciplined for their public remarks. In fact, the *Jeffries* court took the trouble to suggest how the University could legitimately remove Jeffries because of inappropriate speech.<sup>90</sup>

Finally, it should be noted that high schools are significantly different from universities. One critical difference is that high schools serve many children below the age of sexual consent, a distinction obviously central in analyzing the promotion of pedophilia. Further, secondary education is obligatory, replete with required courses, and offers students relatively little choice of their schools and their teachers.<sup>91</sup> As a result it is far more difficult for school officials to utilize fully a

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<sup>90</sup>*Jeffries*, slip opinion, *id.* at 10-11, 66-69. The court observed that Jeffries' and Levin's speech, while controversial, had intellectual content and academic purpose not inappropriate for the University's environment. A similar claim for Melzer's speech cannot be supported for the very different environment of Bronx Science.

<sup>91</sup>New York's statutory framework for secondary education is distinct from that of the public university system. See the New York State Education Law. The same court that decided *Jeffries* noted in another case involving similar issues that at City University it is easy for students to avoid particular teachers. *Levin*, *id.* at 915. The trial court in *Levin*, finding no evidence of disruption to the University or harm to its students as a result of the professor's writings, also noted the University's general tradition of open and free debate and its specific position in the case that students would thrive in a diverse educational atmosphere where even hateful ideas were allowed

teacher whom many students wish to avoid.

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expression. *Id.* at 918.

## VII. RECOMMENDATION

It is our recommendation that the Board of Education impose severe disciplinary action against Melzer, which could appropriately include termination of employment.<sup>15</sup> At a minimum, disciplinary action should include the complete and permanent removal from unsupervised contact with students. He should not be returned to the classroom.

It is important that the reasons for our recommendation be fully stated. It is equally important that we clearly state factors *not* relevant to our recommendation. We have sought to consider the interests of all parties, but consider the interests of the children and their parents to be paramount.

Parents reasonably can be and are concerned for the safety of their children who are given to Melzer's care. Because Melzer has a professed sexual desire for young people of the same ages as their children, and has on at least one occasion indulged his urges, parents' concerns can hardly be surprising.

It is true that the only known occasion where Melzer sexually abused children was ten years ago, and that Melzer has stated that he would not abuse children in this country. Whatever reassurance this might bring is more than offset by his enthusiastic championing of pedophilia, including child pornography and child prostitution, over the past ten years. Worse, his continual sponsorship of and

editorial role in a publication that prints advice on seducing and sexually abusing children over that period are causes for grave concern. This conduct by Melzer could reasonably lead a parent to believe that he is more of a risk now than he ever was.

Even if one does not consider Melzer a risk to sexually abuse his students, his misconduct in aiding the *Bulletin* in publishing the advisories for pedophiles discussed above makes him unfit to teach children. Articles advising pedophiles to use sexual jokes and pornography to identify sexually curious youngsters are hardly academic musings. Indeed, such articles could serve as an instruction manual in the sexual abuse of children and can reasonably be assumed to have abetted such abuse. A person who would knowingly encourage such a venture should not be entrusted with the care of children.

Melzer's advocacy of child pornography and child prostitution raises serious questions about his fitness to teach. Melzer clearly has a First Amendment right to advance these views, but it cannot automatically be assumed that he has a right to teach the very children whose abuse he advocates. We have examined the constitutional issues involved here, and feel the Board is entitled to take Melzer's advocacy of these forms of child abuse into account in evaluating his fitness to teach.

Bronx Science has an undeniable interest in the smooth, regular and efficient operation of its educational activities in furtherance of its educational mission. Its operations have already been disrupted through Melzer's misconduct. Bronx

Science has an excellent history and reputation which have led to extraordinary confidence on the part of parents in the school's ability to provide a sound education. That confidence has at least temporarily been disrupted by Melzer and his activities. Additional and more serious disruption, as well as permanent diminution of parental confidence in and cooperation with the school, seems inevitable if Melzer is returned to the classroom.

Finally, we note that Melzer's sexual orientation has not been a factor in our analysis. As our report makes clear, pedophilia exists among both men and women, heterosexuals and homosexuals. Indeed, most of the instances of sexual abuse of children that this office has encountered in its investigations have been heterosexual in nature. This office is staunchly opposed to any sexual abuse of children by adults, regardless of the sex of the child or the sex of the adult.

## VIII. APPENDIX

<sup>1</sup>Related to this issue are questions of how the normal operations of the school would be affected, including relationships among teachers, administrators, support staff and, of course, students. There is also a set of questions relating to consequences to the school from changes in its external relations to parents, alumni, prospective students, other components of the school system and the public at large who provide essential financial and moral support.

<sup>2</sup>Melzer is an alumnus of the Bronx High School of Science and lives about two blocks from the school. He joined the school's Alumni Association this summer. A copy of an article written by Melzer about the Bronx High School of Science is included in the appendix of this report. See, "At the Bronx High School of Science," in *The Physics Teacher*, April 1980, pp. 272-77.

<sup>3</sup>American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders*, DSM-111-R, 3d ed. (1987), pp. 279-80. Pedophiles generally are attracted to children within a particular age group. *Id.* at 284. As we will document in the next section of this report, Melzer has expressed a specific attraction to boys no more than sixteen years of age.

<sup>4</sup>Melzer was an exchange teacher in Scotland in 1978-79 with his teaching salary paid by the Board of Education. A former administrator at Bronx Science has informed us that the headmaster at the school in Scotland found Melzer to be highly unsatisfactory, but neither Bronx Science nor the Board has a record of the exchange school's reasons. The Board could not locate records identifying the Scotland school or its headmaster.

<sup>5</sup>Healy related this conversation to John Miller of WNBC on one of the March news reports. Our investigators also interviewed Healy.

<sup>6</sup>The *Bulletin* is a magazine that NAMBLA issues ten times each year and mails directly to its members. It also is sold at magazine and book stores, in Manhattan and other locations national and international, including Boston, Los Angeles, Minneapolis, Philadelphia, San Francisco, Washington, D.C., Amsterdam and Toronto, and is even available at the New York Public Library. Issues are typically comprised of news articles, commentaries, letters, fiction, poetry, photographs and drawings. Melzer has acknowledged that the *Bulletin* is sold to the general public, but has unconvincingly expressed ignorance about whether it is available to minors. (See page 1182 of the transcript of *People v. Bagarozzy, op. cit.*)

<sup>7</sup>Following the United States Supreme Court in *Pickering v. Board of Education*, 391 U.S. 563, 88 S.Ct. 1731 (1968), constitutional analysis

typically concentrates on the employer's interests, but in this case the Board of Education's interests *are* the best interests of the students.

<sup>8</sup>Various law enforcement agencies have at different times directly investigated NAMBLA by direct surveillance and the use of undercovers and informants, among other techniques. To the extent specifically noted in this report's footnotes, we have incorporated some of the information obtained by these agencies. We distinguish direct surveillance of NAMBLA's activities from reviews of its literature, and we refer at this point only to the former. Some of the many serious consequences for children exposed to an active pedophile were listed in Section III of this report.

<sup>9</sup>See *Matter of appeal of the Board of Education of the Frontier Central School District*, 23 Educ.Dep.Rep. 339 (1984); *Matter of the Board of Education of the City of New York*, 20 Educ.Dep.Rep. 455 (1981); and sections 2573, 2590-j, 3020, and 3020-a of the New York State Education Law. It would be irresponsible, and incorrect as a matter of law, to suggest that a teacher's worthiness to educate children depends solely on his lack of a criminal record. Case law, including the Reports of the New York State Commissioner of Education, typically formulates the special obligations of teachers by referring to the teacher's service as a role model for his or her students. A critique of simplistic applications of role model theory to teachers may be found in *Anacofora v. Board of Education*, 359 F.Sup. 843 (Md. 1973).

<sup>10</sup>See the standards articulated in *Pickering, id.; Rankin, id; and Flanagan, id.* *Pickering's* analysis allowed for imposition of discipline on a teacher if his speech impeded the performance of his duties. *Id.* at 572.

<sup>11</sup>This criterion is employed in *Flanagan, id.* See also *Pickering, id.*

<sup>12</sup> Since we are not recommending any action against Melzer because of his membership in NAMBLA, we address only parenthetically his constitutionally protected freedom of association. In general, we know that an employee cannot be terminated where there is only evidence that he is a member of an organization that is associated with advocating criminal activities. While public employers may restrain the exercise of their employees' First Amendment interests to a greater extent than the general public's interests may be restrained see, *Pickering v. Board of Education*, 391 U.S. 563, 88 S.Ct. 1731 (1968), government cannot presume guilt by association. To legitimately discipline an employee for his membership in an organization, the governmental employer must show that the employee has a specific intent to further the illegal aims of the organization. See *Keyishian v. Board of Regents* 385 U.S. 589, 87 S.Ct. 675 (1967); see also, *National Gay Task Force v. Board of Education*, 729 F.2d 1270 (10th

Cir.1984). An inquiry that begins with allegations about a government employee's affiliation outside the work place must therefore focus on the employee's specific actions and intentions after he has joined the questioned group. Thus, under current law, in order to discipline Melzer for his association with NAMBLA alone, the Board of Education would, at a minimum, need to establish that the organization has illegal aims and that Melzer has demonstrated the specific intent to further them.

<sup>13</sup>*Pickering v. Board of Education, id.* This balancing formulation was repeated in *Connick v. Myers*, U.S. 138, 103 S.Ct. 1684, 1685 (1983).

<sup>14</sup>*Jeffries v. Harleston*, 820 F.Supp. 739 (S.D.N.Y.1993); *Jeffries v. Harleston*, 92 Civ. 4180 (KC), slip op. (S.D.N.Y. Aug. 4, 1993). We have on file briefs submitted by both sides in the case. See also *Levin v. Harleston*, 770 F.Supp. 895 (S.D.N.Y.1991), *aff'd in part, vacated in part*, 966 F.2d 85 (2d Cir.1992), decided by the same court.

<sup>15</sup>Section 2573(6) of the New York State Education Law provides that teachers "shall hold their respective positions during good behavior and satisfactory teaching service, and shall not be removeable except for cause after a hearing . . ." Section 3020 of the Education Law allows for removal of a teacher who has demonstrated "neglect of duty, incapacity to teach, immoral conduct or other reason which, when appealed to the commissioner of education, shall be held by him sufficient cause for . . . dismissal." A three-year statute of limitations applies to these two sections.