

MADLINE SINGAS
DISTRICT ATTORNEY



**OFFICE OF THE DISTRICT ATTORNEY
NASSAU COUNTY**

November 15, 2016

The New York State Board of Regents
State Education Building
89 Washington Avenue
Albany, N.Y. 12234
Via email to regcomments@nysed.gov

Re: Proposed Amendment of Section 100.2(gg) of the Commissioner's Regulations to the Uniform violent and Disruptive Incident Reporting System (VADIR)

Members of the Board of Regents:

Nothing is more important than the safety of our children, and I have repeatedly expressed my concern about the underreporting of serious incidents of violence, bullying, and harassment in our schools. I am grateful to the Safe Schools Task Force for its work to remedy this problem, however the new rule proposed by the Department of Education¹ will do little to provide policymakers with the timely, consistent, and accurate information that we need to make our schools safer and more welcoming learning environments for our kids. We must do better.

The years-old and wildly disparate data produced by the current VADIR system has been the subject of audits by New York State and New York City Comptrollers,² by civil rights groups,³ and by my office.⁴ While streamlining the number of categories into which reportable incidents fall will ease educators' reporting obligations, there remains significant ambiguity that will almost ensure a

¹ Proposed Change to Subdivision (gg) of Section 100.2 of the Regulations of the Commissioner of Education *available at* <http://www.cdc.gov/mmwr/volumes/65/ss/ss6509a1.htm>

² See audits of the New York State Comptroller available at <http://osc.state.ny.us/audits/allaudits/093006/05s38.pdf> (2006), <http://osc.state.ny.us/audits/allaudits/093007/07f13.pdf> (2007), and <http://osc.state.ny.us/audits/allaudits/093015/13s71.pdf> (2015). Elissa Gootman, Undercount of Violence in Schools, N.Y. TIMES, *available at* <http://www.nytimes.com/2007/09/20/nyregion/20schools.html> (Sept. 20, 2007).

³ Dignity Now: The Campaign to Stop Bullying & Bias-Based Harassment in New York City Schools, *available at* http://www.nyclu.org/files/publications/nyclu_pub_bullying_nyc_schools.pdf.

⁴ Scott Waldman, Bullying Kept Off the Books, Albany Times Union, *available at* <http://www.timesunion.com/local/article/Bullying-kept-off-the-books-4360498.php> (March 18, 2012 at A1); Sophia Hall, Acting Nassau DA: Implementation of Anti-Bullying Dignity Act Has Failed, *available at* <http://newyork.cbslocal.com/2015/07/03/nassau-da-anti-bullying/>

continuation of disparate reporting between schools and underreporting of material incidents of bullying, harassment, and discrimination. Most troublingly, the proposed rule does nothing to improve the timeliness of publicly-available reports. In 2016, we should not settle for a system that provides policymakers with sparse, inconsistent, two year-old data regarding violence, bullying, harassment, and discrimination. New York should lead by requiring transparent, real-time reporting of school violence and disruptive incidents.

In conversations with leading educators statewide, my staff has found that many view the reporting of violent and disruptive incidents as a useless, onerous, paper-pushing exercise, left for the end of the school year. The proposed rule will not change that. This data is important, it should be accurate, sufficiently comprehensive, available to parents, policymakers, and the public in a timely manner so that we can work together to promptly address problems that endanger our children.

To that end, I offer the following comments on the proposed amendment of Section 100.2(gg) of the Commissioner's Regulations:

1. Two Year-Old Data is Insufficient – Require Real-Time Online Reporting

The Department should develop a technology platform, available to schools at no cost, to facilitate real-time reporting of incidents of school violence. School administrators should be required to input data no later than one month after an incident occurs. Under the current and proposed systems, data is not publicly available for up to two years after an incident occurs. Parents should not have to wait months for data to be posted, and forced to search through lengthy and complicated spreadsheets to ascertain whether their child's school is safe-- whether gang activity, drug activity, or bias-related incidents have occurred with frequency. This information should be available in an easily searchable platform with current information provided by educators during the school year. While this recommendation may be beyond the scope of this regulation, it is the only way that VADIR can achieve its intended purpose, and any change in VADIR categories should be accompanied by a new, improved reporting platform with user-friendly online tools to facilitate easy access to school data.

2. Gang-Related Incidents Should Be Documented and Immediately Reported

Gang activity in schools can begin suddenly, escalate quickly, and frequently necessitates the involvement of law enforcement—underscoring the importance of real-time, comprehensive reporting of violent and disruptive incidents. Gang activity frequently results in violence, bullying, and harassment, and when a reportable incident is gang-related, that information should be collected through VADIR. The presence of gangs in our schools has a seriously corrosive impact not only on those involved, but also the safety of all other students, faculty and staff. Gang activity should be reported immediately as to ensure every resource is brought to bear to ensure a safe and productive learning environment for all.

3. Hate- and Bias-Motivated Incidents Should Be Reported Clearly

New York law elevates the penalties for certain offenses when they are motivated by hate, recognizing the especially heinous nature of these crimes.⁵ While evidence is clear that many students have been the victims of violence, bullying, and harassment on the basis of sexual orientation, transgender status, religion, race, or sex, among other factors, the proposed rule does not explicitly provide for the collection of data regarding bias when a reportable incident such as an assault or sexual offense is hate- or bias-motivated. When such a motivation is clear in the nature of the incident, VADIR should require and facilitate complete reporting.⁶

4. Threats, Intimidation, or Abuse Based Upon Gender Identity or Gender Expression Should Be Explicitly Included as Reportable Material Incidents

Studies show that transgender and gender non-conforming students experience heartbreakingly high rates of suicide, and that a majority report experiences with harassment, bullying, and discrimination.⁷ The proposed rule contains a broad list of reportable categories of material incidents including those based on a person's actual or perceived race, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender, or sex. While discrimination on the basis of gender identity is sex discrimination under New York law,⁸ and discrimination on the basis of gender dysphoria is disability discrimination,⁹ "gender identity and expression" should be explicitly added to the list of reportable material incidents of harassment, bullying, and/or discrimination detailed in proposed NYCRR § 102.(gg)(vi)(d). Without this explicit addition, it is foreseeable that an educator could innocently but errantly report discrimination based on gender identity or expression under the categories of "sex" or "sexual orientation." To promote accurate reporting, gender identity or expression should be a distinct category.

5. Drug-Related Incidents Should be Reported in Greater Detail

The national epidemic of heroin and opiate abuse is costing thousands of young lives each year with prescription painkiller abuse frequently opening the door to addiction.¹⁰ The proposed rule appears to place drug and alcohol use in single categories, however the disparity in lethality

⁵ See N.Y. Pen. L. § 485.05.

⁶ Existing reports required by the Dignity Act provide for the identification of discrimination, harassment, and bullying on the basis of race, ethnic group, national origin, color, religion, religious practice, disability, gender, sexual orientation, sex, and weight. When applicable, a motivating bias should be disclosed with any reportable incident.

⁷ See Dignity for All: Discrimination Against Transgender and Gender Non-Conforming Students in New York, New York Civil Liberties Union, June 24, 2015, available at http://www.nyclu.org/files/publications/dignityforall_final_201508.pdf; Sexual Identity, Sex of Sexual Contacts, and Health-Related Behaviors Among Students in Grades 9–12 — United States and Selected Sites, 2015, Centers for Disease Control & Prevention, available at <http://www.cdc.gov/mmwr/volumes/65/ss/ss6509a1.htm>

⁸ See generally N.Y. Exec. L. §296; 9 NYCRR 466.13.

⁹ *Id.*

¹⁰ The Numbers Behind the Heroin Epidemic, N.Y. TIMES, available at http://www.nytimes.com/interactive/2015/10/30/us/31heroin-deaths.html?_r=0

between heroin use when compared to alcohol and marijuana warrant more detailed reporting. An electronic reporting platform, as suggested above, would permit a reporting educator to add detail to a drug-related incident to ensure the frequency and severity of reported drug incidents is more accurately reflected in public data so that appropriate resources can be allocated to address systemic problems.

6. Requiring “Verification” of Instances of Bullying, Harassment, and Discrimination Will Perpetuate Underreporting by Schools

As drafted, the proposed rule will require reporting of only “verified” incidents of harassment, bullying, or discrimination, replacing the more inclusive current rule which requires:

All incidents involving intimidation, harassment, menacing or bullying behavior as defined in clause (1)(vi)(d) if this subdivision that are the subject of a written or oral complaint to the school principal or other school administrator responsible for school discipline, or are otherwise directly observed by such principal or administrator shall be reported.

A review of recent data collected under the current rule makes clear that many—if not most—incidents of bullying and harassment reported to or witnessed by school personnel go unreported through VADIR despite schools’ obligation to report such incidents. By weakening that disclosure obligation to require reporting of only “verified” incidents—and providing for no standardized incident verification procedure—the proposed rule leaves the decision to report an incident open to the unbridled discretion to administrators which will further compromise the reliability and utility of the data collected.

When a student, parent, faculty or staff member reports an incident of harassment, discrimination, or bullying, it should be documented and reported through VADIR because verifying such incidents when they occur in the back of a school bus, on a playground, in a busy hallway, or a locker room is simply not practical. If a victim of bullying or harassment takes the difficult step to come forward, there should be no discretion as to whether such incident is documented and reported.

I was encouraged when the Safe Schools Task Force was reconvened after my predecessor highlighted years of problematic reporting in schools statewide. When I reviewed that same data two years later, I was disappointed that the problems appeared to have worsened—with reporting obligations under the Dignity Act and Cyberbullying Bill apparently viewed by too many as end-of-the-school-year administrative burdens, rather than a meaningful vehicle to help protect our kids.

While I appreciate that the proposed modifications to VADIR are only one piece of reform, without real action by the Department to improve the comprehensiveness and timeliness of the information reported, the problems my office and many others have identified will continue unabated.

Our kids deserve safe schools in which to learn, and we all deserve good and timely information about the prevalence of violence, bullying, harassment and discrimination in our schools.

I hope that you will consider these comments and make modifications not only to this proposed rule, but to the overall means by which this critically important school climate data is collected, tracked, and reported.

As always, my staff and I are available to assist in any way we can.

Sincerely,

A handwritten signature in black ink that reads "Madeline Singas". The signature is written in a cursive style with a large initial "M" and a long, sweeping tail on the "S".

Madeline Singas
District Attorney

Cc: Dr. MaryEllen Elia
New York State Commissioner of Education