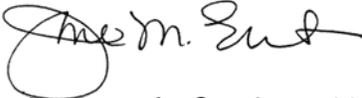




TO: P-12 Education Committee

FROM: Jhone M. Ebert 

SUBJECT: Proposed Amendment of Section 100.2(gg) of the Commissioner's Regulations, Relating to the Uniform Violent and Disruptive Incident Reporting System (VADIR)

DATE: December 1, 2016

AUTHORIZATION(S):  

SUMMARY

Issue for Decision

Should the Board of Regents adopt the proposed amendment of section 100.2(gg) of the Commissioner's Regulations relating to the Uniform Violent and Disruptive Incident Reporting System (VADIR)?

Reason(s) for Consideration

Review of Policy.

Proposed Handling

The proposed rule is being presented to the P-12 Education Committee and full Board for adoption as a permanent rule at the December 2016 Regents meeting. Supporting materials are available upon request from the Secretary to the Board of Regents.

Procedural History

A Notice of Proposed Rule Making was published in the State Register on September 28, 2016. A copy of the proposed rule (see Attachment A), and an Assessment of Public Comment are attached (see Attachment B). Supporting materials are available upon request from the Secretary to the Board of Regents.

Background Information

Both federal and State law require the Department to implement a statewide policy that identifies persistently dangerous public elementary and secondary schools, for the purpose of unsafe school choice.¹ Enacted as part of the Safe Schools Against Violence in Education Act (SAVE) in 2001, Education Law §2802 required the Commissioner, in conjunction with the Division of Criminal Justice Services, to establish a statewide uniform violent incident reporting system (VADIR) and to promulgate regulations defining “violent or disruptive incidents.” In order to implement this section, Commissioner’s regulation §100.2(gg) was developed in consultation with the Division of Criminal Justice Services as well as legislative and executive staff, and required schools to record information about violent and disruptive incidents beginning in the 2001-02 school year.

To fulfill the requirements of federal law relating to unsafe school choice, Education Law §2802 requires the Commissioner to annually determine which public elementary and secondary schools are persistently dangerous, in accordance with the Commissioner’s regulations. Each school is required to maintain a record of all violent and disruptive incidents that occur within each school year, from July 1st through June 30th, and to provide an annual report of such incidents to the superintendent. Currently, schools must submit to the Department the number of incidents in each of the twenty categories outlined in 100.2(gg). Using this VADIR data, the Department calculates the School Violence Index (SVI) which is the benchmark for determining which schools are persistently dangerous.

Presently, Commissioner’s regulation §100.2(gg) requires schools to collect and submit data related to violent incidents in twenty categories, as listed below:

- 1) Homicide
- 2) Forcible Sex Offenses and Other Sex Offenses
- 3) Robbery
- 4) Assault with Serious Physical Injury
- 5) Arson
- 6) Kidnapping
- 7) Assault with Physical Injury
- 8) Reckless Endangerment
- 9) Minor Altercations
- 10) Intimidation, Harassment, Menacing or Bullying
- 11) Burglary
- 12) Criminal Mischief
- 13) Larceny and Other Theft Offenses
- 14) Bomb Threat
- 15) False Alarm
- 16) Riot

¹ 20 U.S.C.A. §7912; N.Y. Education Law §2801.

- 17) Weapons Possession
- 18) Drug Use, Possession, or Sale
- 19) Alcohol Use, Possession, or Sale
- 20) Other Disruptive Incidents

In recent years, stakeholders have expressed concern that the categories do not accurately capture the types of incidents that occur in schools, and do not serve as a tool for schools to identify strategies to reduce incidents of violence and improve school climate for the purpose of improving student outcomes.

In 1999, the New York State Task Force on School Violence was created and issued its first report, *Safer Schools for the 21st Century: A Common Sense Approach to Keep New York's Students and Schools Safe*. It was the work of this Task Force that led to the Safe Schools Against Violence in Education Act (SAVE).² In January of 2013, the Board of Regents directed the Department to reestablish the New York State Safe Schools Task Force. In 2013 and 2014, the New York State Safe Schools Task Force held meetings and forums with various groups of stakeholders, including students. As a result of this work, the New York State Safe Schools Task Force issued thirty-six recommendations for improving school safety statewide. One of these recommendations specifically recommended that the Department:

"[d]evelop a new process and criteria for the Persistently Dangerous designation and a new set of definitions of incident categories for reporting using a School Climate Index. The reporting process for Dignity for All Students Act (DASA) and Violent and Disruptive Incident Reporting (VADIR) should be combined and renamed into one system that is not punitive and is reflective of the school climate and can be used for prevention and intervention purposes; also, that it includes positive measures and incorporates most improved schools."

Together with Department staff, members of the New York State Safe Schools Task Force developed a revised method for collecting incident data that incorporates both VADIR and DASA into one reporting structure. The revised definitions developed by the Task Force provide a greater degree of clarity and are better aligned with the intent of VADIR, which is not to be punitive but rather to inform policies for reducing school violence.

As a result, the Task Force recommended and the Department agrees that the current VADIR regulation should be revised to reduce the current 20 reporting categories to the following nine categories, commencing with the 2017-2018 school year:

- 1) Homicide
- 2) Sexual Offenses
- 3) Physical Injury
- 4) Weapons Possession
- 5) Material Incidents of Discrimination, Harassment, and Bullying

² Chapter 181 of the Laws of New York 2000.

- 6) Bomb Threat
- 7) False Alarm
- 8) Use, Possession or Sale of Drugs
- 9) Use, Possession or Sale of Alcohol

It is important to note that in addition to streamlining the categories of violent incidents, the New York State Safe Schools Task Force further recommended that the Department focus on promoting positive school climate rather than focusing solely on measuring school violence. As a result, Department staff presented information to the Board of Regents in April 2015 proposing the development of a School Climate Index (SCI), which is comprised of school climate surveys, this revised VADIR/DASA data collection process, and rates of chronic absenteeism. During the 2016-17 school year, the Department will be piloting the SCI in approximately ten school districts across the State.

Related Regent's Items

<http://www.regents.nysed.gov/common/regents/files/916p12d2.pdf>
<http://www.regents.nysed.gov/common/regents/files/516p12d1.pdf>
<https://www.regents.nysed.gov/common/regents/files/P-12%20Violent%20and%20Disruptive%20Incident%20Report.pdf>
<https://www.regents.nysed.gov/common/regents/files/meetings/Oct%202015/1015p12d1.pdf>
<https://www.regents.nysed.gov/common/regents/files/1013p12d1%5B1%5D.pdf>
<http://www.regents.nysed.gov/common/regents/files/914p12d6.pdf>
<http://www.regents.nysed.gov/common/regents/files/SafeSchoolsTaskForce.pdf>
<http://www.regents.nysed.gov/common/regents/files/SafeSchools.pdf>
<http://www.regents.nysed.gov/common/regents/files/614p12d1.pdf>

Recommendation

Staff recommends that the Regents take the following action:

VOTED: That section 100.2(gg) of the Regulations of the Commissioner be amended, as submitted, effective July 1, 2017.

Timetable for Implementation

If adopted at the December Regents meeting, the proposed amendment will become effective as a permanent rule on July 1, 2017.

Attachment A

AMENDMENT TO THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to Education Law sections 101, 207, 305, 308, 2802, and Chapter 482 of the Laws of 2010.

1. Subdivision (gg) of section 100.2 of the Regulations of the Commissioner of Education shall be amended, effective July 1, 2017 to read as follows:

(gg) Uniform violent or disruptive incident reporting system. School districts, boards of cooperative educational services, charter schools and county vocational education and extension boards shall submit to the commissioner annual reports of violent or disruptive incidents that occurred in the prior school year, commencing with the 2001-2002 school year, in accordance with Education Law, section 2802 and this subdivision.

(1) Definitions. For the purposes of this subdivision:

(i)...

(ii) ...

(iii) Physical injury means impairment of physical condition or substantial pain and includes, but is not limited to, black eyes, welts, abrasions, bruises, cuts not requiring stitches, swelling and headaches not related to a concussion.

(iv) Serious physical injury means physical injury which creates a substantial risk of death or which causes death or serious and protracted disfigurement or protracted impairment of health or protracted loss or impairment of the function of any bodily organ and requires hospitalization or treatment in an emergency medical care facility outside of school, including but not limited to, a bullet wound, fractured or broken bones or

teeth, concussions, cuts requiring stitches and any other injury involving risk of death or disfigurement.

(v)...

(vi) Violent or disruptive incident shall mean one of the following categories of incidents that occurs on school property of the school district, board of cooperative educational services, charter school or county vocational education and extension board, committed with or without a weapon (except in the case of weapons possession):

(a) Homicide. Any intentional violent conduct which results in the death of another person.

(b) Sex offenses.

(1) Forcible sex offenses. [Forcible sex offenses involving forcible compulsion. Incidents involving forcible compulsion and completed or attempted sexual intercourse, oral sexual conduct, anal sexual conduct or aggravated sexual contact with or without a weapon, including, but not limited to, rape and sodomy.] Sex offenses involving forcible compulsion and completed or attempted sexual intercourse, oral sexual conduct, anal sexual conduct or aggravated sexual contact, with or without a weapon including but not limited to, rape and sodomy; or resulting from forcibly touching or grabbing another student on a part of the body that is generally regarded as private, which includes, but it not limited to the buttocks, breasts, or genitalia.

(2) Other sex offenses. Other non-consensual sex offenses involving inappropriate sexual contact [but no forcible compulsion], including, but not limited to, touching another student on a part of the body that is generally regarded as private, which includes, but is not limited to, the buttocks, breasts, and genitalia, removing another student's clothing to reveal underwear or private body parts, or brushing or rubbing against another person in a sexual manner. Other sex offenses shall also

include, but not be limited to conduct that may be consensual or involve a child who is incapable of consent by reason of disability or because he or she is under 17 years of age, provided that such term shall not include consensual sexual conduct involving only students, and/or non-students 18 years of age or under, unless at least one of the individuals participating in the conduct is at least four years older than the youngest individual participating in the conduct.

(c) [Robbery. Forcible stealing of property from a person by using or threatening the immediate use of physical force upon that person, with or without the use of a weapon.

(d) Assault [involving serious physical injury]. Intentionally or recklessly causing [serious] physical injury to another person, with or without a weapon, in violation of the school district code of conduct [.] which shall include either;

(1) engaging in behavior which causes serious physical injury; or,

(2) engaging in behavior which causes physical injury.

[(e). . .

(f) . . .

(g) . . .

(h) . . .

(i). . .

(j) ...]

(d) Material incident of harassment, bullying, and/or discrimination. A single verified incident or a series of related verified incidents where a student is subjected to harassment, bullying and/or discrimination by a student and/or employee on school property or at a school function. In addition, such term shall include a verified incident or series of related incidents of harassment or bullying that occur off school property, as

defined in subclause (viii) of paragraph (1) of subdivision (kk) of this section, Such conduct shall include, but is not limited to, threats, intimidation or abuse based on a person's actual or perceived race, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender, or sex; provided that nothing in this subdivision shall be construed to prohibit a denial of admission into, or exclusion from, a course of instruction based on a person's gender that would be permissible under Education Law sections 3201-a or 2854(2)(a) and Title IX of the Education Amendments of 1972 (20 U.S.C. section 1681, et seq.), or to prohibit, as discrimination based on disability, actions that would be permissible under section 504 of the Rehabilitation Act of 1973.

[(k) . . .

(l) . . .

(m) . . .

(n)] (e) Bomb threat. A telephoned, written or electronic message that a bomb, explosive, chemical or biological weapon has been or will be placed on school property.

[(o)] (f) False alarm. ~~[Falsely activating]~~ Causing a fire alarm or other disaster alarm to be activated knowing there is no danger, or through false reporting of a fire or disaster.

[(p) Riot. Simultaneously with four or more persons engages in tumultuous and violent conduct and thereby intentionally or recklessly causes or creates a grave risk of physical injury or substantial property damage or causes public alarm.

(q)] (g) Weapons possession. Possession of [a weapon] one or more weapons as defined by subparagraph (v) of this paragraph, except possession in a classroom or laboratory as part of an instructional program or in a school-related activity under the

supervision of a teacher or other school personnel as authorized by school officials[.]

which are discovered either through:

(1) routine security checks; or

(2) weapons possessed at a school function or on school property which are not discovered through a routine security check, including but not limited to, weapons found in the possession of a student or within a locker.

[(r)] (h) [Drug use] Use, possession or sale of drugs. Illegally using [or], possessing, or being under the influence of a controlled substance or marijuana, on school property or at a school function, including having such substance on a person in a locker, vehicle, or other personal space; selling or distributing a controlled substance or marijuana, on school property; finding a controlled substance or marijuana, on school property that is not in the possession of any person; provided that nothing herein shall be construed to apply to the lawful administration of a prescription drug on school property.

[(s)] (i) [Alcohol use] Use, possession or sale of alcohol. Illegally using [or], [Possessing] possessing, or being under the influence of alcohol on school property or at a school function, including having such substance on a person or in a locker, vehicle, or other personal space; illegally selling or distributing alcohol on school property or at a school function; finding alcohol on school property that is not in the possession of any person.

[(t) Other disruptive incidents. Other incidents involving disruption of the educational process.]

(2) Recording of offenses

(i) For purposes of reporting pursuant to this subdivision, each incident shall be reported once in the highest ranking category of offense that applies, except that

incidents involving a weapon and one of the offenses listed in clauses (1)(vi)(a) through [(p)] (f) of this subdivision shall be reported in the highest ranking category of offense that applies as an offense committed with a weapon, and not in weapons possession; and incidents involving drug use, possession or sale and/or alcohol use, possession or sale and another offense shall be reported in the highest ranking category in clauses (1)(vi)(a) through [(q)] (g) of this subdivision that applies. If the offense involves only the use, possession or sale of drugs or alcohol, it shall be recorded in the applicable category of drug or alcohol use, possession or sale as an incident involving drug or alcohol use, possession or sale only. For purposes of determining the highest ranking offense pursuant to this subparagraph, offenses shall be ranked in the order that they appear in clauses (1)(vi)(a) through [(p)] (f) of this subdivision, followed by weapons possession, drug use, possession or sale and alcohol use, possession or sale[, and other disruptive incidents].

(ii) [The offenses described in clauses (1)(vi)(i), (k), (l), (m), (p) and (t) of this subdivision shall only be reported where such behavior, under the district's code of conduct, is of sufficient seriousness to warrant the suspension or removal of a student or the referral of a student to a counseling or treatment program or transfer of a student to an alternative education program, or the referral of a student to the juvenile justice system, or disciplinary action against or dismissal of a school employee, or notification of law enforcement of the commission of a crime, whether or not the perpetrators are identified.] All incidents involving bomb threats or false alarms as defined in clauses (1)(vi)[(n)] (e) and [(o)] (f) of this subdivision shall be reported. All incidents involving [intimidation, harassment, menacing or bullying behavior] material incidents of harassment, bullying, and/or discrimination as defined in clause (1)(vi)[(j)] (d) of 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.

(3)...

(4) Content of report. Each individual violent or disruptive incident report shall be in a form prescribed by the commissioner and shall contain the following information concerning each violent or disruptive incident that occurred in the prior school year:

(i)...

(ii)...

(iii)

(iv) the types of incident, identified by category listed in clauses (1)(vi)(a) through [(t)](i) of this subdivision;

(v)...

(vii)...

(viii)...

(ix)...

(x)...

(5)...

(6)...

(7)...

(8) School violence index. Each school year, commencing with the 2005-2006 school year, the department shall establish a school violence index as a comparative measure of the level of school violence in a school. The school violence index will be computed in accordance with a formula established by the commissioner that takes into account the enrollment of the school and is weighted to reflect the most serious violent incidents, which shall include but need not be limited to the following categories of

incidents: homicide, forcible sexual offense, [robbery,] assault resulting in serious physical injury, assault resulting in physical injury, [arson, kidnapping,] and incidents involving the possession, use or threatened use of a weapon.

8 NYCRR Subpart 100.2(gg)

ASSESSMENT OF PUBLIC COMMENT

Since publication of a Notice of Proposed Rule Making in the State Register on September 28, 2016, the State Education Department (SED) received the following comments:

1. COMMENT:

I would ask that bomb threat include bomb/terror threat. During this time in our educational world, administrators deal with threats much broader and more encompassing than bomb threats alone. We have students threaten to "shoot up" schools, "burn" schools, etc.

DEPARTMENT RESPONSE:

The proposed amendment does not make any revisions to the current definition of bomb threat. However, the proposed regulation includes material incidents of harassment, bullying, and/or discrimination as a reportable category based upon the recommendations of the New York State Safe Schools Task Force, which included representatives from law enforcement. This category includes as a reportable incident the broader use of threats, intimidation or abuse. Therefore, the Department believes that no revisions are necessary.

2. COMMENT:

I am in favor of a change in VADIR from 9 to 20 categories due to continued statewide inconsistencies in reporting and categories which are important but are not delineated as “Violent” nor contribute to the Violence Index.

DEPARTMENT RESPONSE:

No response necessary as the comment is supportive.

3. COMMENT:

We are writing to urge NYSED to adopt the proposed amendment relating to VADIR, insofar as it promotes safety and equality in education for LGBT students. The proposed regulation will provide clear reporting guidelines and more efficient reporting mechanisms for bullying and harassment that targets LGBT students.

DEPARTMENT RESPONSE:

No response necessary as the comment is supportive.

4. COMMENT:

In the process of revising, please ensure clarity around the threshold for what behaviors and what consequences determine what is a VADIR incident.

DEPARTMENT RESPONSE:

The proposed amendment only relates to the clarifying the definitions of and streamlining the categories for VADIR reportable offenses. The consequences/interventions attached to a particular offense are determined by each school district in accordance with its code of conduct pursuant to Education Law §2801. Therefore, the comment is outside the scope of the proposed amendment. However, the Department will revise the implementing guidance to provide schools with more information on the applicable indicators for determining the seriousness of a particular

incident for purposes of calculating the school violence index (SVI) on the basis of VADIR data reported by schools.

5. COMMENT:

We suggest the Department encourage school districts to consider implementing a system that will help identify students in need of support and intervention, not just one that tallies incidents based on mandatory reporting requirements.

DEPARTMENT RESPONSE:

The intended purpose of both the statute and the regulation, are to provide disaggregated data on violent incidents for the purpose of identifying which public schools are persistently dangerous. The methods for identifying of students in need of appropriate supports and interventions are determined at the local level, and within each district's code of conduct. However, the collection of VADIR data is vitally important to inform the work of schools and the Department in improving both student safety and student outcomes. The Department continues to work with schools and other stakeholders, outside of the scope of the VADIR data collection, to implement systems which promote a positive school climate. Therefore, the Department does not believe that revisions are necessary.

6. COMMENT:

Commenter expressed concern about transparency and questioned the usefulness of data under the proposed amendments. The abbreviated list of categories would consolidate the current system's twenty distinct violence categories into nine broader incident types. As a result, the public would lose the ability to distinguish between severe and minor incidents in several categories. By consolidating categories of

disparate severity and eliminating others entirely, the new system would only weaken the state's ability to assess school violence and deprive the public of vital information.

DEPARTMENT RESPONSE:

Education Law §2802 provides the Commissioner, in conjunction with the Division of Criminal Justice Services (DCJS), broad discretion in defining violent incidents. The proposed amendments were borne out of recommendations from the New York State Safe Schools Task Force, whose membership included representatives from DCJS. One of the recommendations of the Task Force was to:

“[d]evelop a new process and criteria for the Persistently Dangerous designation and a new set of definitions of incident categories for reporting using a School Climate Index. The reporting process for Dignity for All Students Act (DASA) and Violent and Disruptive Incident Reporting (VADIR) should be combined and renamed into one system that is not punitive and is reflective of the school climate and can be used for prevention and intervention purposes; also, that it includes positive measures and incorporates most improved schools.”

The purpose of the proposed amendment and the reduction of the reported categories from 20 to 9 is to more accurately capture the types of incidents that occur in schools and to reduce the punitive effect of the VADIR system and to instead serve as a tool for schools to identify strategies to reduce incidents of violence and improve school climate for the purpose of improving student outcomes. While the VADIR categories have been streamlined, the distinction between the degrees of severity of most incident categories will still be captured. The existing regulation continues to provide for a weighted SVI calculation to reflect the most serious violent incidents. For purposes of calculating the SVI, each violent incident will still have a corresponding weight which identifies the severity of the incident. The weights assigned to VADIR incidents will continue to allow the public to distinguish between the more severe incidents as evidenced by the SVI.

Furthermore, in accordance with Education Law §2801, the summary of such information shall still be required in the school district report cards.

7. COMMENT:

Commenter supports reducing violence in schools. However, commenter expressed concern that the requirements would overburden schools and increase confusion and inconsistency in reporting. Expanded reporting requirements would result in charter schools spending less time on actually educating their students and keeping them safe, and more time and resources reporting to NYSED.

DEPARTMENT RESPONSE:

The existing regulation requires school districts, boards of cooperative educational services, charter schools and county vocational education and extension boards to submit to the Commissioner annual reports of violent and disruptive incidents. The proposed amendment does not impose an additional reporting requirement on charter schools, or other schools. Rather, the proposed amendment streamlines the categories of VADIR incidents from 20 categories to 9, thus allowing less time reporting violent incidents and more time on instruction. Therefore, no revisions are necessary.

8. COMMENT:

Under the current and proposed systems, data is not publicly available for up to two years after an incident occurs. The Department should develop a technology platform, available to schools at no cost, to facilitate real-time reporting of incidents of school violence.

DEPARTMENT RESPONSE:

The proposed amendments do not adjust the required timetable for reporting violent and disruptive incidents, and as such the comment is outside the scope of the proposed amendment. However, commencing with the 2015-16 school year, the Department employed technology resources to address concerns related to the timeliness of VADIR and DASA (Dignity for All Students Act) reporting. Beginning in the 2015-16 school year, schools now report VADIR and DASA data immediately following the school year, but no later than the end of July. That data is used to determine the list of Persistently Dangerous schools which is determined and released by August 1, following the conclusion of the school year. Thereafter, this raw incident data is posted on the Department's website, listed by school. The Department is continuing efforts to streamline the data verification process to ensure timely and accurate data to assist schools in creating more positive climates within their buildings, within existing resources.

In addition, while the statute and the regulation require the annual submission of data, school personnel have the responsibility and the opportunity to thoroughly investigate incidents, and respond accordingly to an incident in real time.

9. COMMENT:

One commenter was concerned about the prevalence of gang-related activity in schools. Where a reportable incident is gang-related, that information should be collected through VADIR. Gang activity in schools can begin suddenly, escalate quickly, and frequently necessitates the involvement of law enforcement. Such activity should be reported immediately.

DEPARTMENT RESPONSE:

The existing regulation requires, and the proposed amendments do not alter the obligation of schools to report whether a violent incident was bias-related, drug-related, or gang or group-related. The annual collection VADIR of data is required for the annual calculation of persistently dangerous schools pursuant to State and federal law. (20 U.S.C.A. §7912; N.Y. Ed.L. §2801) The collection of VADIR data does not preclude schools from addressing such incidents in a timely and more comprehensive manner.

In addition to these data reporting requirements, while the statute and the regulation require the annual submission of data, school personnel have the responsibility and the opportunity to thoroughly investigate incidents, and respond accordingly to an incident in real time.

10. COMMENT:

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.

DEPARTMENT RESPONSE:

Both the existing regulation and the proposed amendment continue the authority of the Commissioner to prescribe the form, and manner of the VADIR report. Commissioner's regulation §100.2(gg)(4) will still require the report to include whether the incident was bias-related, drug-related, or gang or group-related. The Department agrees that it is important to collect data surrounding an incident when there is evidence that such incident is motivated by one or more of the factors outlined in DASA. It is for this reason, and based upon the recommendation of the New York State Safe Schools

Task Force, the Department is revising the VADIR/DASA data submission form to prompt schools to include additional information on the reported incident, including whether or not the incident was based on one of the above categories. The Department believes this approach will provide valuable data and assist in both the DASA and VADIR reporting.

11. COMMENT:

Threats, intimidation, or abuse based upon gender identity or gender expression should be explicitly included as reportable material incidents. To promote accurate reporting, gender identity or expression should be a distinct category.

DEPARTMENT RESPONSE:

In addition to the obligations under DASA and Commissioner's regulations §§100.2(jj) and 100.2(kk), the proposed amendment makes clear that material incidents of harassment, bullying and/or discrimination based on, among other things, a person's actual or perceived race, color, weight, sexual orientation, gender, or sex are included as a VADIR category. In an effort to streamline reporting requirements and to ensure accuracy of reporting, the Department will be revising the standard VADIR form under which school districts will have to report such incidents. The form will prompt schools to include additional information on the reported incident, including whether or not the incident was based on one of the above categories. The Department believes this approach will provide valuable data and assist in both the DASA and VADIR reporting.

12. COMMENT:

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. The proposed rule appears to place drug and alcohol use in single categories. However the disparity in lethality between heroin use when compared to alcohol and marijuana warrant more detailed reporting.

DEPARTMENT RESPONSE:

The Department agrees that the increasing abuse of opioids throughout New York is a serious matter. However, the scope of the existing regulation and the proposed amendments are to merely establish a framework within which schools are required to report certain incidents for the purpose of identifying persistently dangerous schools in accordance with State and federal law, under which both substances are considered illegal. The proposed amendments require schools to report incidents of the use, possession or sale of drugs, and the use, possession or sale of alcohol. As such, the comment is outside the scope of the proposed amendment and no revisions are necessary.

13. COMMENT:

Commenter expressed concern that the amendments only require schools to report “verified” incidents of harassment, discrimination, or bullying. Commenter was further concerned that many incidents go unreported by schools, despite their obligation to do so under VADIR and DASA. 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.

DEPARTMENT RESPONSE:

The Dignity for all Students Act governs the reporting and investigation of incidents of harassment, discrimination, or bullying on school property or at a school function which would include the scenarios suggested by the commenter. School districts continue to have a duty to investigate and verify reports of such incidents, pursuant to Commissioner's regulation §100.2(kk). For a suggested sample form for receiving such reports, please see recently released guidance,

<http://www.p12.nysed.gov/dignityact/documents/SED-AGLtrandGuidance8-31-16.pdf>

The proposed amendment explicitly includes material incidents of harassment, bullying and/or discrimination and mirrors the definition in Commissioner's regulation §100.2(kk) as a VADIR reportable category. The proposed amendment adopts such definition, to ensure clarity and consistency in reporting incidents within schools, and for VADIR and DASA purposes. While this does not relieve a school district of the obligation to comply with the many provisions of DASA, it will provide a streamlined reporting process through which districts report the disaggregated data relating to such incidents. For additional guidance on how to address such reports and how to comply with DASA, please see <http://www.p12.nysed.gov/dignityact/>.

