



THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK / ALBANY, NY 12234

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: September 1, 2016

AUTHORIZATION(S):



SUMMARY

Issue for Discussion

Should the Board of Regents amend 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 for discussion at the September 2016 Regents meeting. A copy of the proposed amendment is attached.

Procedural History

A Notice of Proposed Rule Making will be published in the State Register on September 28, 2016. Supporting materials are available upon request 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 (Attachment A). 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 2017-18 school year:

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

² Chapter 181 of the Laws of New York 2000.

- 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/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>

Timetable for Implementation

It is anticipated that the proposed amendment will be adopted by the Board of Regents at its December 2016 meeting. If adopted at the December 2016 meeting, the proposed amendment will become effective for the next school year, commencing on July 1, 2017.

Attachment A

New York State Safe Schools Task Force Members

Organization	Representative
1. Advocates for Children	Kim Sweet
2. Albany City School District	Tony Albanese
3. Alliance for Quality Education	Marina Marcou-O'Malley
4. Association for Educational Safety and Health Professionals	Rick Shaw John Warneck
5. Berkshire Free Union School District	Greg Pasos
6. Children's Conference	Jim Cultrara
7. Children's Defense Fund New York	Melanie Hartzog
8. Children's Institute	Dirk Hightower Nancy Cook Elizabeth Devaney
9. Commission on Economic Opportunity	Colleen Talbot
10. Community Indicators Consortium	Maeve Powlick
11. Conference of Big 5 School Districts	Jennifer Pyle
12. Council of School Supervisors & Administrators	Alithia Rodriquez-Rolon
13. East Greenbush Central School District	Tim Malloy
14. Empire State Pride Agenda	Jonathan Lang
15. Empire State School Administrators Association	Chuck Mitchell
16. Erie Board of Cooperative Education 1	Sharon Comerford
17. Erie County	Scott Patronik
18. Every Person Influences Children (EPIC)	Michelle Urbaczyk
19. Fulton Central School District	Ryan Lanigan (District) Danielle Crisafulli (HS) Danielle Quinn (JHS) Carlo Cuccaro (Lanigan ES)
20. Gay, Lesbian & Straight Education Network (GLSEN)	Sarah Munshi
21. Genesee Valley Education Partnership, LeRoy	Kim Mclaughlin
22. Healthy Schools Network, Inc.	Claire Barnett
23. Ithaca City School District	Timothy McDonald
24. Monroe County, Assistant District Attorney	Nicole Fantigrossi
25. Nassau County Assistant District Attorney Office	John Byrne
26. National Center for Security and Preparedness	Rick Mathews
27. Network for Youth Success	Kelly Sturgis
28. New York Association of School Psychologists	Kelly Caci Shauna Maynard John Kelly Pamela Madeiros Kitty Corsi
29. New York City Department Of Education Office of Safety & Youth Development	Diane Costagiola

Organization	Representative
30. New York City Department Of Education, consultant	Connie Cuttle
31. New York Civil Liberties Union	Johanna Miller Lauren Frederico
32. New York State Afterschool Network	Alli Lidie
33. New York State Assembly (Nolan)	Devra Nusbaum
34. New York State Assembly (O'Donnell)	Ann Horowitz
35. New York State Association for Pupil Transportation	Peter Mannella
36. New York State Association for School Attorneys	Kathy Ahearn
37. New York State Center for Rural Schools	Tomas O'Brien
38. New York State Center for School Safety	Tina Goodwin Segal Jim Dillan Kathy Oboyski Butler
39. New York State Council of School Superintendents	Robert Lowry
40. New York State Counselor's Association	Carrie Frost Joann Klein Suzi Stoller Dr. Kathleen Corbett
41. New York State Department of Health	Priti Irani Kitty Gelberg
42. New York State Division of Criminal Justice Services	Francis Wade Tom Andriola
43. New York State Intelligence and Strategic Information Sharing	Tony Perez
44. New York State Office of Children and Family Services	Tim Bromirski Viola Abbitt
45. New York State Office of Mental Health	Nancy Flanagan Donna Bradbury Doug Bailey
46. New York State Police	Janice Severson
47. New York State Probation	Patricia Aikens
48. New York State School Board Association	Kate Gaffney
49. New York State School Counselor's Association	Gloria Jean
50. New York State School Social Worker's Association	Hai-Ping Yeh
51. New York State United Teachers' Association	Bernice Rivera Terry McSweeney
52. Oceanside Central School District	Brendon Mitchell
53. Oswego Board Of Cooperative Education Services (BOCES)	Patricia Cerio
54. Parsons Child and Family Center	Joan Valery
55. Permanent Judicial Commission on Justice for Children	Kathleen DeCataldo
56. Putnam Northern Westchester Board of Cooperative Education	Deborah Hardy
57. Roxbury Central School District	Thomas O'Brien
58. Schenectady City School District	Joanne Wolcott

Organization	Representative
59. School Administrators Association of New York State	Jim Viola
60. New York State Education Department	Steve Marchant
61. SUNY Albany School of Education	Kevin Quinn Mark Barth
62. Troy City Schools	Casey Parker
63. Washington Saratoga Warren Hamilton Essex Board of Cooperative Education	Turina Parker
64. Webster Central School District	Neil Flood

Attachment B

AMENDMENT TO THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to Education Law sections 101, 207, 305, 308, 2802, and Chapter 90 of the Laws of 2013.

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.