



STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

ERIC T. SCHNEIDERMAN
ATTORNEY GENERAL



NEW YORK STATE EDUCATION DEPARTMENT
THE UNIVERSITY OF THE STATE OF NEW YORK

MARY ELLEN ELIA
COMMISSIONER OF EDUCATION
PRESIDENT OF THE UNIVERSITY OF THE STATE OF NEW YORK

August 31, 2016

To: District Superintendents

From: Renee L. Rider
Office of Student Support Services Assistant Commissioner,
New York State Education Department

Lourdes M. Rosado
Civil Rights Bureau Chief, New York State Office of the Attorney General

Re: Dignity for All Students Act: Results of Statewide
School District Survey and Guidance on Implementation

In September 2014, the Office of the Attorney General (“OAG”) and the New York State Education Department (“SED”) conducted a survey to help determine whether public elementary and secondary schools are meeting their obligations under the Dignity for All Students Act (“DASA” or “Dignity Act”). Our agencies provided the survey questionnaire to all school district superintendents statewide and requested that they provide answers, and in some cases supporting documentation, to questions concerning their districts’ implementation of the Dignity Act’s various provisions.

Survey responses received from districts were intended to identify best practices used by districts. A(u-1 (e)4 (s)-1 ()4 (e)4 (r)3 (0 T4 (m)-2 (u(s)-1 (a) (i)-2(D)-2 4que)4 (s)-1 (t)-29.7(m)-6 (i)--6 (

material incidents of discrimination, harassment, and/or cyberbullying. The Act and implementing regulations also contain qualitative provisions requiring districts, among other things to (1) modify their Codes of Conduct to include prohibitions on harassment, bullying, and discrimination, and distribute such Codes to students and their parents, (2) train school employees on topics of bullying, harassment, and discrimination, (3) ~~appoint~~ ^{appoint} Dignity Act Coordinators for each school, and (4) provide students with instruction intended to discourage harassment, bullying, and discrimination. The OAG SED survey questionnaire contained twenty-one questions organized into four sections corresponding to these categories.

Our agencies sent the questionnaire to the superintendents of all 719 school districts in New York State.³ Responding districts were geographically diverse, with the exception of one county represent all other counties statewide. A high concentration of responses came from the four counties adjoining New York City: Nassau, Suffolk, Westchester, and Rockland Counties.

Mandated District Reporting Results Analyzed

Beginning with the 2013-14 school year, all school districts in New York State are required to submit to SED an annual report of material incidents of harassment, bullying, and/or discrimination that occurred in such school year and that were reported to the district superintendent by the principal of each school within the district.⁵ Data for the 2013-14 school year was compiled and released by SED in two separate tranches: one data set covering schools within the City School District of the City of New York, and another data set covering all other schools in New York State. The data provide a quantitative context for the survey results discussed below and likely reflect significant underreporting of material incidents by districts throughout the state.

Incident Reporting for New York State

SED released data covering 1,639,939 students enrolled in 2,914 public and charter schools in New York State. Two notable observations arise from this data and warrant discussion in connection with the qualitative survey results. First, out of the total number of

¹ See N.Y. Educ. Law (“Educ. Law”) § 15; Regulations of the New York State Commissioner of Education (“Commissioner’s Regulations”) Part 100, 8 NYCRR § 100.2(kk).

² See Educ. Law §§ 1048, 801a, 2801; Commissioner’s Regulations Part 100, 8 NYCRR §§ 100.2(c), (l), (j).

³ For a directory of New York State school districts, see <http://www.oms.nysed.gov/oas/directory.html>

⁴ No survey responses were received from any school district within Delaware County. The following discussion is drawn from survey responses provided by 153 districts across New York State.

⁵ See Educ. Law § 15; Commissioner’s Regulations Part 100, 8 NYCRR § 100.2(kk)(2), (3). SED also receives Violent and Disruptive Incident Reporting (“VADIR”) data in a similar format to the data it collects pursuant to DASA. This analysis refers only to DASA material incident reporting.

reporting schools, 1,161 of them *forty percent* – reported zero material incidents of harassment, bullying, or discrimination, and 2,355 schools *eighty-one percent* – reported ten or fewer incidents. Based upon our agencies’ analysis, the large number of schools reporting zero or less than ten material incidents is not the result of a high concentration of schools of a small size, where low numbers of incidents might be more likely than at schools with larger student bodies. Rather, when districts are grouped according to the size of their student bodies, these low percentages of incident reporting hold roughly constant.

Second, for those material incidents that schools did report, a high number were classified as “other” in nature. SED provides districts a form entitled “Report of Incidents Concerning School Safety and the Educational Climate” on which school personnel can describe and classify material incidents throughout the school year, in order to allow for aggregated district annual reporting of incidents to SED. In classifying the “nature of material incidents of discrimination and/or harassment,” the form has columns for the protected bases enumerated in DASA – including race, ethnic group, national origin, color, religion, ~~religi~~ practice, disability, gender, sexual orientation, sex, and weight – –

In contrast to the reporting for New York State, for those material incidents that schools did report, a lower number were classified as “other” in ~~part~~ ^{total} of the 1,973 incidents reported by schools in New York City for the 2013-

placement of the ~~summary~~ code of
the summary/code of conduct on a
link to persons in parental relation or
code of conduct exists and is available

each teacher in a district school –
district's complete code of conduct
that they do not provide each teacher in
code of conduct. The most commonly
issue was the availability of a copy on a

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school employees should implement those requirements. This subset of more detailed materials assisted our agencies in developing certain suggested parameters for school employee training, set forth in the Recommendations section below. However, even those districts that provided detailed training materials rarely trained their staff either on how to report incidents of bullying, harassment, or discrimination to SED, or on how to gather relevant information to the individual ultimately responsible for reporting such incidents to SED. The notable absence of training on these topics may shed some light on the extent of DASA incident reporting data provided by districts to SED, as discussed above.

Virtually all districts reported conducting school employee training at least once a year, with a small number of districts conducting training more frequently. These trainings were typically wrapped into other professional development activities for staff.

3. Dignity Act Coordinators

The overwhelming majority of responding districts have designated at least one employee at each school as a Dignity Act Coordinator. Most school districts place the name and contact information for Dignity Act Coordinators on district websites. Nearly three and one-half of districts, respectively, do not provide the name and contact information for Dignity Act Coordinators in school codes of conduct or plain language summaries of those codes. Many survey responses indicated that districts were unaware of reports that this information be placed in codes of conduct. A number of districts further commented that it was costly or inefficient to include such information there, because Dignity Act Coordinators often change annually and districts do not reprint their codes of conduct every year.

Approximately twenty percent of responding districts do not post the name and contact information for Dignity Act Coordinators in highly visible areas of each school building. Nearly one-half of the districts who reported failing to take this step promised to do so within the next academic year. A small number of districts reported that their view signs are not effective and students are instead taught how to report to the principal.

Regarding turnover and gaps in the appointment of Dignity Act Coordinators, nearly forty percent of responding districts reported that a Coordinator vacated his/her position during the 2012-13 and 2013-14 academic years. Of those reporting vacancies, slightly more than one-half of those districts stated that the Coordinator position was immediately filled, while just under one-half of those districts reported a time lapse often between two to six weeks between an employee departing the position and a new one filling the position. One district reported maintaining a regulation that requires the filling of a vacancy within 30 days of a Dignity Act Coordinator leaving such position.

4. Student Instruction on Anti-Discrimination/Harassment Principles

The overwhelming majority of districts reported providing instruction with an emphasis on discouraging acts of harassment, bullying, and discrimination as part of an instructional component on civility, citizenship, and character education for grades K-12. Districts described a variety of approaches to providing this instruction, several of which recurred throughout the survey responses. These include, in order of frequency: (i) specific “lessons” on character education separate from classroom curricular instruction; (ii) school assemblies; (iii) incorporation of this instruction into curriculum for, e.g., health, English language arts, social studies, and technology; (iv) materials and programming from Positive Behavioral Interventions and Support (“PBIS”) from the U.S. Department of Education’s Office of Special Education Programs; (v) materials and programming from the Olweus Bullying Prevention Program; (vi) materials and services from BOCES; (vii) materials and services from the non profit organization Rachel’s Challenge, a group inspired by Rachel Scott, the first victim in the 1999 Columbine school shooting; and (viii) other outside speakers and guests.

Recommendations

The survey results from reporting districts, in the quantitative context of district incident reporting, led our agencies to develop a number of recommendations aimed at promoting and supporting district DASA compliance. The following recommendations include reminders as to what specific provisions of the Act require, along with additional substantive elaborations beyond existing guidance offered by SED on DASA implementation and compliance:

1. Improved DASA training for district personnel: A lack of understanding about what constitutes a material incident of harassment or discrimination may be a strong cause of both (i) the level of underreporting reflected in statewide district reporting to SED, and (ii) the fairly common classification and outcome of New York City, the majority classification of reported material incidents as “other” in nature. A higher frequency of training, twice a year as opposed to annually, could assist in developing understanding among district personnel. However, the frequently sparse and inadequate training materials provided by many districts in

understanding of the Act and that districts should consider incorporating into their current training materials. Effective district materials often contain discussion and training around the following elements: (i) definitions of harassment, bullying, and discrimination, as provided in the Education Law and Commissioner's Regulations⁹ (ii) the history, purpose, and significance

districts on how reporting of such incidents should be conducted, from the moment a school employee is made aware of an incident, until the time the district superintendent (or designee) reports aggregate data on such incidents to SED (Attachment 1.) This guidance also contains a Sample DASA Incident Reporting Form for consideration and use by districts

Finally, in light of the significant responsibilities of Dignity Act Coordinators, including their common status as the principal's or superintendent's designee for receiving allegations of material incidents from school employees in a building, we recommend additional training for these Coordinators beyond that provided to all school employees. Given these responsibilities, it is essential that these particular school employees have a clear understanding of what information is needed to evaluate allegations of harassment, bullying, or discrimination, and to accurately report material incidents arising out of their school buildings to the district superintendent and, ultimately, to SED.

2. Improved language access to district codes of conduct and plain language summaries of the same. As discussed above, two-thirds of responding districts did not translate their codes of conduct into languages other than English or even make such translated copies available upon request. This is problematic in light of the significant number of English language learners attending schools in New York State, many of whom also have parents or

appointment of interim coordinators immediately and permanent coordinators within 30 days of a vacancy.

resource. In such cases, districts should affirmatively notify teachers, by email or other means, about the availability and location of those materials.

On behalf of both agencies, we thank each responding district for its time and thoughtfulness in this effort. Because of the information you provided, we have been able to develop the attached materials to support your efforts as you continue to implement ~~DA~~ SA provide safe and supportive learning environments for all students.

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- x Require administrators or a designee (Dignity Act Coordinator) to lead a thorough investigation of all reports of harassment, bullying, or discrimination which must be completed promptly after the receipt of any written report;
- x Upon the verification of harassing, bullying, or discriminatory behavior, require the school to take prompt action(s) reasonably calculated to end the bullying and discrimination, eliminate any hostile environment, prevent recurrence of the behavior, and to ensure the safety of the student(s) against whom harassment, bullying or discrimination was directed;
- x Prohibit retaliation against any individual who reports or assists in the investigation of harassment, bullying, or discrimination
- x Develop a school strategy to prevent harassment, bullying, and discrimination;
- x Require school leaders to make a regular report (at least once during each school year) to the superintendent regarding data and trends related to harassment, bullying and discrimination;
- x Require school administrators or designee(s) to promptly notify local law enforcement officials when harassment, bullying and/or discrimination is believed to constitute criminal conduct. Districts are encouraged to work with local law enforcement to develop a common understanding for when such notification is required;
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- x A written incident report should be completed by the school leader and/or designee within two school days of the incident.

The superintendent, school leader or designee, (Dignity Act Coordinator) is required to lead or supervise a thorough investigation. The investigation should include the following steps:

- x Interview the target of the incident separately and away from the alleged aggressor
- x Interview the student accused of the harassment, bullying, or discrimination
- x Interview any witnesses to the harassment, bullying, or discrimination, including teachers or staff;
- x Obtain any other objective evidence from recording devices (as) or, in the case of cyberbullying, copies of tweets, emails, Facebook pages, etc.;
- x Using a DASA Incident Reporting Form a sample of which is attached as well as any supplemental documentation, prepare a report of preliminary investigation findings as promptly as possible following notification of the incident to school personnel
- x Contact law enforcement when the harassment, bullying and/or discriminatory behavior is believed to constitute criminal conduct

The person(s) in parental relation of student interviewed should be contacted to inform them of the incident and the verification process in accordance with school district policies. Following the collection and review of all available information, a determination should be made as to whether a material incident of bullying, harassment and/or discrimination occurred. A material incident is defined in the Commissioner's Regulations to include a single verified incident or a series of related verified incidents of harassment, bullying and/or discrimination. So as to assist with this determination include whether the incident has been repeated; whether there is a power imbalance between the parties, (an older vs. younger student and/or physically larger vs. smaller student) whether the behavior is O.4FO 0 12 s 0 Tmndu-2(i)-94 0 2.4 (R)Tj 0.0

To allow superintendents to fulfill this duty, districts should develop policies and procedures for the retention of DASA Incident Report forms. District policies and procedures should include the following requirements:

- x Retention of all DASA Incident Report forms and investigatory materials by the Dignity Act Coordinator

SAMPLE for District Adaptation

NOTE: This form is being provided for informational purposes only

Name of target: (student being bullied, harassed, or discriminated against)

Name(s) of alleged
offender(s):

Date(s) and time(s) of
incident(s):

What was your involvement in the incident?

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(Add extra pages if needed)

If there were any adults in the area when this happened, what did they do?

Types of bias involved (if known): (Check all that apply)

5 D F H 5 H O L J L R Q 6 H [
& R O R U 5 H O L J L R X V S U D F W Z ~~W~~ K H U
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Names of others who may have witnessed the incident:

Was the student absent from school as a result of the incident?

1 R < H V Number of days student was absent: _____

Does the situation continue to occur? < H V 1 R

What do you think should be done about the situation?

You can contact the school administrator, Dignity Act Coordinator, counselor, or other staff member (whichever you are most comfortable with) for information or assistance at any time.

