

## **Questions and Answers from CFSS Webinar March 16, 2017**

### ***How to Effectively Conduct and Document Investigations Related to School Safety and Culture***

**1. If no written complaint is forthcoming, what is our responsibility to pursue it?**

The school should document the verbal complaint and investigate the complaint.

The unfounded verbal complaint would be reported in VADIR Item 2. Documentation of the investigation would be maintained by the school.

If the investigation of the verbal complaint found that the incident met the criteria as a DASA material incident, the incident would be reported on annual DASA reporting form. If the investigation of the verbal complaint meets the criteria of a VADIR incident, the incident would be reported on annual VADIR reporting form. An incident could be documented as both if it is determined to be a material incident and the incident meets one of the disciplinary thresholds.

**2. You mentioned to follow up with the person making the DASA complaint in writing to say what the school has done. If the complainant is a student doesn't it constitute a breach of privacy to discuss what has happened with another student with the complainant?**

The purpose of the follow-up with the person making the DASA complaint would be to reassure the person that the school has taken the complaint and has conducted an investigation. Names of individuals involved would not be included in the communication. Articulating the school's response without disclosing confidential information would not be a breach of privacy and could reassure the student complainant the school is invested in providing a safe learning environment.

All students should be encouraged to report any incident of bullying, harassment or discrimination. The student who made the complaint trusted that the school would take it seriously and make a good faith effort to address it. A written statement summarizing all the actions that the school has taken in response to the complaint is an important documentation whether or not the complaint turned out to be material. The breach of privacy or confidentiality would only occur if a specific disciplinary action toward a named student was identified. A brief statement indicating that appropriate disciplinary action was taken (without mentioning any names) would be allowable. In addition, the report could also indicate all the steps taken to insure that the student making the complaint was safe and protected from future incidents. These steps would document positive and proactive actions taken even if insufficient evidence could be found to warrant disciplinary actions toward the student who allegedly bullied the targeted student.

When one student who makes a complaint feels that the school was responsive and acted responsibly, there is a greater likelihood that other students will trust the school as well. An increased number of complaints unfortunately are often viewed as a negative indicator, but it could also be interpreted as students demonstrating their trust and confidence in school staff caring about them and acting to protect them.

**3. What, if any recourse, do you have when students and/or parents elect to disclose the complaint to others mid-investigation? (Potentially impacting interviews and efficacy of investigation)?**

School staff cannot prohibit or stop students or parents from sharing information about what happens in school. However, as part of accepting a complaint, school staff should thank the person making the complaint for caring about the school and helping to keep the school safe for all students. Parents and/or students can be informed of how the school will proceed with

investigating the complaint. Parents and students can also be enlisted to support the investigation and subsequent actions to prevent future incidents of bullying, harassment or discrimination by refraining from talking about the incident with others until the investigation is completed. Those making the complaint can also be informed that they are providing information that can also help improve school climate for all students.

**4. When aggressor/offender is a student with a disability, and District finds the conduct is a manifestation, the District cannot disclose information to the parents/students, due to confidentiality- but it often frustrates parents who do not see "consequences" for the child- Any suggestions?**

As you noted, parents want communication regarding the safety of their children. Check-ins or follow-ups with parents to make parents aware of the school's efforts to protect the targeted student can be reassuring to parents. Parents want to know their child is safe in school. Explaining that the school has taken the complaint, made an investigation, addressed those involved and is taking action to prevent future incidents helps make parents aware that the school is invested in providing a safe learning environment. The more specific the school can be about what actions it has taken and will take in the future to protect the student, the more reassurance the parent will have about their child being safe in school. Names of individuals involved would not be included in the information communicated with parents. Articulating the school's response without disclosing confidential information provides parents with assurances of the school's investment in providing a safe learning environment.

**5. In terms of reporting for VADIR or DASA, you mentioned that it's a consideration in terms of reporting. Could you please provide a brief scenario where this may be a consideration and what the result might be?**

VADIR incidents report student offenders, targets can be adults or students. VADIR reports the number of student offenders, the type of incident, use weapons, and types of consequences (columns j-o).

DASA incidents report students as targets; offenders can be adults or students. DASA reports the number of student targets and type of material incident.

The investigation may potentially lead to VADIR/DASA overlap when reporting an incident of intimidation, menacing, harassment, and/or bullying (IMHB). Here are three examples:

In one example, an investigation of IMHB may show that there was a DASA verified material incident and a VADIR incident (Item 10) because the incident met the discipline threshold (columns j through o) in VADIR. This scenario would be reported as a VADIR Item 10 IMHB because it met the VADIR discipline threshold. This incident would also be reported in DASA as a verified material incident.

In a second example, the investigation may show that there was a DASA verified material incident but there was no discipline threshold met in VADIR. This scenario would be reported as a DASA material incident and a VADIR Item 2.

In a third example, the investigation may show that there was no DASA verified material incident and no discipline threshold met in VADIR. This scenario would be reported as a VADIR Item 2.

Please note that there is a significant difference between many incidents that would be considered under VADIR categories and material incidents under DASA. Although some incidents might be considered under both VADIR and DASA, many material incidents under DASA can occur outside of adult supervision and observation. These incidents can include slight gestures or apparently innocuous words that can seriously interfere with a student's ability to learn and

function in the school environment. This is why an investigation must include an interview with the target of the IMHB conducted preferably by a staff person the student knows and trusts.

While there are some instances where disciplinary consequences are appropriately used with an IMHB incident, many less dramatic and distinct instances of IMHB can often be overlooked or dismissed. In addition, many IMHB acts can be addressed satisfactorily without having to use more formal disciplinary consequences. Promptly responding to complaints of IMHB (even when evidence to verify them as material incidents is not obtainable) sends an important message about how all members of the school community should treat each other. For example, many staff overhearing a student making a disrespectful comment in the hallway might be reluctant to intervene because they think it might require formal disciplinary actions. An appropriate response would be to respectfully intervene and state that such language is not acceptable in the school and how it conflicts with the value of respecting others.

## **6. What is the difference between bullying and DASA cases?**

The DASA legislation does include the term "bullying" along with intimidation, harassment and discrimination. The act of bullying typically implies that there is a power differential between the student who bullies and the student who is targeted. Part of any thorough investigation would be to determine if such a power differential exists between the students involved.

All students are capable at one time or another of bullying another person. Bully as a verb is an appropriate term to characterize words and actions, but it's not appropriate to use as a label for any individual. It is important to note that the same child, in different circumstances, may take the role of the bully, the target, or a bystander. Labels do not reflect the range of roles a student may play. In addition, while a student may not readily admit to being a "bully," they may acknowledge engaging in harmful behavior toward another student. When addressing inappropriate behavior, schools should carefully consider using language that encourages the most productive and beneficial conversation with students, staff, and persons in parental relation about what it means to treat others with dignity and respect.

In many instances a student who bullies or harasses another student might legitimately be unaware of the impact of his/her actions on others. Many students who bully or harass others require more than just consequences to learn how to avoid such behavior in the future. Schools might need to provide ongoing social emotional skill development for students who fail to treat others with respect.

In addition students who are targets of bullying might also require ongoing support and guidance in making friends, avoiding certain social situations and learning ways of responding to inappropriate or hurtful behaviors.

Most students don't bully others and are not targets of bullying. These students play a key role in decreasing the amount of bullying and promoting a positive school climate. These students should be educated about the responsibility and influence that they have in preventing and reducing acts of IMHB and promoting positive school climate.

The DASA legislation although it prohibits acts of IMHB it also requires that schools actively promote a safe and supportive environment for all students. This latter requirement means that schools should be actively promoting social emotional learning and helping all students learn to cooperate and respect each other's differences. In this regard, a "DASA situation" could be considered every "teachable moment" in the school day.

<http://www.p12.nysed.gov/dignityact/documents/FINALDignityForAllStudentsActGuidanceMay2016.pdf>)

**7. When an incident involves cyberbullying through social media from non-students by other students from another district (who you cannot identify), other than notifying police if warranted what else could be done?**

It is best to operate on the assumption that all educators want to insure that school is a safe place for all students. Staff from other districts might be reluctant to help another school if they think that their primary responsibility will be to discipline the student suspected of cyberbullying. They might anticipate that gaining sufficient evidence to justify disciplinary consequences will be very difficult. However if the district with the student making the complaint communicates from the onset that their goal is to stop and prevent future incidents of cyberbullying, the staff from the other district is more likely to collaborate and cooperate.

The two districts can discuss a variety of strategies and actions that can be taken in both districts to protect the target and the alleged student who cyberbullied. If the goal is to stop the bullying and prevent future incidents, the student suspected of cyberbullying can be informed that his/her online behavior will be monitored; this bringing the issue to light often deters further incidents. In addition the student who was bullied can be provided strategies for avoiding online situations where they are vulnerable and coached in how to respond to it and to collect evidence.

**8. If the perpetrator or targeted student(s) has(have) an IEP, how does that impact reporting?**

VADIR reporting is not impacted when a student has an IEP and a weapon is involved or if the incident is in any of the MUST REPORT categories: homicide, sex offense, robbery, assault, arson, kidnapping, reckless endangerment, bomb threat, false alarm, weapons possession, use/possession/sale of drugs, use/possession/sale of alcohol. All incidents involving weapons or in any of these categories must be reported in VADIR.

If the incident is in a REPORT IF category (minor altercation, IMHB, burglary, criminal mischief, larceny/ theft, riot, other disruptive incident) and if the aggressor has an IEP which may require a manifestation hearing, then as a result of the manifestation hearing it was determined that any resulting consequence would not meet a VADIR consequence threshold, the incident would not be reportable in VADIR because the VADIR consequence threshold was not met.

For DASA all material incidents need to be reported regardless of whether any of the students involved has an IEP. A student with an IEP might bully or harass other students because of an emotional disability. The fact that the student has a disability might influence disciplinary action taken with the student, however the school is still required to stop the IMHB and protect the student who was bullied. Alternatives to discipline could include but not be limited to increasing supervision, providing closer monitoring of the student, referring the student to the school counselor, or assessing the appropriateness of the IEP in meeting the student's needs.

**9. My school currently uses an "Incident Report" where all scholars can report or document issues of bullying, physical fights, etc. Is this ok? Should I also be using a DASA form?**

Per an August 31, 2016 memo to all district superintendents from NYSED and NYS Office of the Attorney General (OAG), "Each school's incident reporting system should include a DASA Incident Reporting Form which should be easily accessible to parents, students, and staff on the school/district website." A sample DASA Incident Reporting Form for district adaptation was

provided in the appendix to the memo for informational purposes. The memo is available on the NYSED website

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

**10. If a complaint is made, and then through the investigation, the complaint is found to be false, or not to the degree reported, should this information be captured and kept for the extended period as well?**

Unfounded complaints would be reported in VADIR Item 2. Documentation of the investigation would be maintained by the school.

If an investigation of the complaint found that the complaint to any degree resulted in a DASA material incident, the incident would be reported on the annual DASA reporting form. If the investigation of the complaint found the complaint to any degree met the criteria for a VADIR incident, the incident would be reported on the annual VADIR reporting form.

**11. Can you report if it was founded or unfounded?**

Unfounded complaints would be reported in VADIR Item 2. Documentation of the investigation would be maintained by the school.

If an investigation of the complaint found that the complaint resulted in a DASA material incident, the incident would be reported in DASA. If the investigation of the complaint found the complaint met the criteria for a VADIR incident, the incident would be reported in VADIR.

**12. What is the difference between DASA and VADIR?**

VADIR incidents always have student offenders; targets can be adults or students. VADIR applies to specific categories of incidents, incidents that involve weapons, and/or incidents that meet the criteria for consequences listed in columns j-o on the VADIR report form.

DASA incidents always have students as targets; offenders can be adults or students. DASA addresses complaints that are based on a single incident or a series of related incidents, that a student was subjected to discrimination or harassment by student or employee, that the target reported a hostile environment was created with or without physical contact and or verbal threat, intimidation, or abuse, and that the incident was severe or pervasive enough to interfere with the target's education, well-being, or created fear for physical safety including mental, emotional and/or physical well-being and educational performance, opportunities, or benefits.

The Dignity for All Students Act (DASA) is not only about stopping bullying, harassment and discrimination; it requires schools to take proactive steps to improve school climate so that students can learn without fear or anxiety about physical and/or emotional safety. Simply responding in a reactive manner to reports of bullying in a case-by-case manner is no guarantee that students can learn in the school environment with fear or anxiety. Although some incidents of bullying might require disciplinary actions involving specific consequences for those students who bully others, many other incidents of bullying can be satisfactorily addressed in a variety of ways without involving traditional types of disciplinary actions/consequences.

Many students are unaware of the impact of their words and actions on others and the school environment. When a respected and trusted adult holds them accountable in a respectful way about how their words and actions are harmful, many students can learn from their mistakes without having negative consequences applied. School staff must assess each incident on a case-by-case basis taking into account prior history, student needs, parental support and the potential risk towards other students in making a decision about what response/intervention is appropriate for the incident.

The DASA legislation requires a proactive, preventative and educative approach to effectively address the issues related to IMHB and school climate. Even schools that follow all the right procedures and protocols in responding to complaints on a case-by-case basis must still take appropriate actions to prevent a hostile environment and insure that school is safe environment for all students.

Helping students treat each other with respect involves educating, coaching, supporting and guiding them. The more proactive a school is in promoting a positive school climate, improving relationships and educating all members of the school community, the amount of bullying and harassment in the school environment should decrease. Schools that make positive school climate a priority, typically also see a decrease in the number of incidents reported in the VADIR categories.

**13. When a student(s) coaches others in risky, harmful behaviors, to the point of severe emotional distress, how do we report this?**

The goal of the DASA legislation is to ensure that all students learn and function in school free from fear and anxiety. Material incidents are words or actions that negatively affect any student's ability to learn and, as such, need to be reported, addressed and ultimately stopped. Although a student, who coaches others in ways to cause distress to a student or a group of students, does not directly interact with those students, that student can and should be held accountable for contributing to that emotional distress. More than one individual can commit material incidents of IMHB. Since there is no requirement for formal disciplinary consequences to be applied in any material incident, school administrators can take whatever steps they deem necessary to ensure that such behaviors stop and not reoccur. These steps could include, but be not limited to: reparation to the students harmed, community service, closer monitoring or counseling.

If an investigation fails to produce clear evidence that certain students bullied or harassed a targeted student, schools should not automatically assume that no IMHB occurred. They should still take appropriate action to protect and ensure the safety of the targeted student. Schools should also record and document whatever actions they take.

**14. Who decides when to terminate intervention plans after an investigation has been concluded?**

Many parents might think that punishing the student who allegedly bullied their child is the only acceptable response to their complaint. So when accepting complaints, schools should acknowledge their commitment to taking the complaint seriously while also explaining the potential difficulty involved gaining sufficient evidence to verify that a material incident occurred. This acknowledgement sets the stage for a very important question that should guide follow-up actions and communications: What outcome would you like to see for your child? In most cases, those making a complaint about IMHB primarily want those actions to stop and not continue. This clarifying question helps the school and parents discuss realistic expectations in investigating and resolving a concern. While schools might have difficulty in obtaining enough evidence to apply disciplinary consequences to certain students accused of IMHB, they can still take many positive and protective actions to insure that targeted students are safe and able to learn. The decision to terminate an intervention is based upon the school's data-based assessment of the safety of the students who are targets of IMHB.

In addition, even if there was enough evidence to warrant disciplinary consequences for a student who bullied, completion of those consequences should not automatically be considered as sufficient for terminating an intervention or considering the "case closed".

Documentation of the investigation of complaints, including the process for determining if the complaint was founded or unfounded, and how the complaint was resolved should be maintained by the school or district. NYSED and the NYS OAG have provided a sample DASA Incident Reporting Form for district adaptation. This form is provided for informational purposes and can be accessed at

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

Please note the area on sample DASA form that allows school leaders or designees to document the investigation and to record the results of the investigation. The sample DASA form includes a section to note school or district efforts to address a hostile environment, follow-up contact with parents of the target and or aggressor, contact with law enforcement, and a section to address remediation.

**15. If the police come to us investigating a harassment claim that happened outside school, between two of our students and they ask for a home address how would we document that or would we?**

Schools are required to make any information available to the police that would assist them in their investigations. Even though the harassment did not occur in the school, those students involved in the harassment might require closer supervision and support.

**16. What is the best way to collect evidence for the strongest DASA investigation?**

NYSED and the OAG have provided a sample DASA Incident Reporting Form for district adaptation. This form is provided for informational purposes and can be accessed at <http://www.p12.nysed.gov/dignityact/documents/SED-AGLtrandGuidance8-31-16.pdf> Districts, BOCES, and charter schools are advised to consult with their attorneys regarding the implementation of the Dignity Act.

This sample form was developed by the NYSED and the Office of the Attorney General and includes an opening statement and a sample incident reporting form. The reporting form includes designated areas to record information and a checklist using DASA terms to note information obtained during the investigation. Districts and schools are encouraged to review the terms noted in the checklist on the sample and to consider including these terms on their DASA complaint forms to concisely document investigations and report complaints.

Please note the area on sample DASA form that allows school leaders or designees to document the investigation and to record the results of the investigation. The sample DASA form includes a section to note school or district efforts to address a hostile environment, follow-up contact with parents of the target and or aggressor, contact with law enforcement, and a section to address remediation.

**17. Do we pursue the written complaint or let it go, as long as we document and investigate?**

DASA requires that schools and districts report all complaints to the administrator or designee within a specific time frame. Complaints must be reported orally to an administrator or designee within one school day. Complaints must be reported in writing to an administrator or designee within two school days. Documentation of the investigation of complaints, including the process for determining if the complaint was founded or unfounded, and how the complaint was resolved should be maintained by the school or district. NYSED and the OAG have provided a sample DASA Incident Reporting Form for district adaptation. This form is provided for informational purposes and can be accessed at

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Please note the area on sample DASA form that allows school leaders or designees to document the investigation and to record the results of the investigation. The sample DASA form includes a section to note school or district efforts to address a hostile environment, follow-up contact with parents of the target and or aggressor, contact with law enforcement, and a section to address remediation.

**18. Can you tell a non-custodial parent whether or not an incident was founded or unfounded?**

Schools and districts are responsible for following their district policies and may need to consult with their legal counsel when there are questions about communication with non-custodial parents. Parents want to know their child is safe in school. The school or district can explain their efforts to provide a safe learning environment for all students. Specific names or events would not be included in the information communicated with parents. Articulating the school's response without disclosing confidential information provides parents with assurances of the school's commitment to provide a safe learning environment for all students.