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

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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 across the state, and to assist our agencies in providing guidance and support to districts to enhance DASA compliance. To that end, this letter provides background on the Act and the survey; analyzes the mandated reporting of material incidents of harassment, bullying, and/or discrimination provided by districts to SED for the 2013-14 school year; outlines significant survey results identified by the OAG and SED; and offers recommendations to districts to promote compliance with the Act, including an enclosed guidance document (Attachment 1) and set of model DASA training materials, provided as a PowerPoint file.

Background and Survey Response

DASA went into effect in the summer of 2012, with supplemental provisions on cyber-bullying going into effect in the summer of 2013. The Act and implementing regulations of the Commissioner of Education require districts to provide annual reporting to SED of the number of

material incidents of discrimination, harassment, and/or cyberbullying.¹ 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) designate Dignity Act Coordinators for each school, and (4) provide students with instruction intended to discourage harassment, bullying, and discrimination.² 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 and, with the exception of one county, represent all other counties statewide.⁴ 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 §§ 10-18, 801-a, 2801; Commissioner’s Regulations Part 100, 8 NYCRR §§ 100.2(c), (l), (jj).

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.⁶

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, religious practice, disability, gender, sexual orientation, sex, and weight – as well as a column for “other”. Of the 21,653 incidents reported by districts for the 2013-14 school year, 13,388 – *sixty-two percent* – were classified as “other.” This classification was far in excess of the next most frequently reported bases for incidents, namely race (1,541, or seven percent), sex (1,531, or seven percent) and sexual orientation (1,294, or six percent).

These observations suggest both substantial underreporting of material incidents of harassment and discrimination by schools in New York State, along with a significant level of confusion or uncertainty as to how to classify those incidents that are reported.

Incident Reporting for New York City

SED released data covering 1,051,966 students enrolled in 1,792 public and charter schools within the City School District of the City of New York. Out of the total number of schools reporting, 1,257 of them – *seventy percent* – reported zero material incidents of harassment, bullying, or discrimination, and 1,762 schools – *ninety-eight percent* – reported ten or fewer incidents. Again, 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 schools are grouped according to the size of their student bodies – using the median-driven analysis described previously – these extremely low percentages of incident reporting hold roughly constant.⁷

⁶ Our agencies conducted similar quantitative analyses by grouping schools according to student populations over 1,000 (median of 1,313), between 500 and 1,000 (median of 638), and under 500 students (median of 362).

⁷ For example, 204 schools had more than 1,000 students enrolled, and *ninety percent* of these reported five or less incidents of harassment or discrimination; 630 schools had between 500 and 1,000 students enrolled, and *ninety-five percent* reported five or less incidents of harassment or discrimination; and 958 schools had less than 500 students enrolled, and *ninety-seven percent* reported five or less incidents of harassment or discrimination.

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 nature. Of the 1,973 incidents reported by schools in New York City for the 2013-14 school year, 441 – *twenty-two percent* – were classified as other. This classification was close in number to the next most frequently reported basis for incidents, namely gender (431, or twenty-two percent) and slightly higher than the next most frequently reported basis, sexual orientation (284, or fourteen percent).

These observations also suggest both significant underreporting of material incidents of harassment and discrimination by schools in New York City, along with some confusion or uncertainty as to how to classify those incidents that are reported.

Survey Results

Our agencies’ review of the survey results yielded a number of observations and trends. They are organized by the four categories set forth in the questionnaire, *i.e.*, Codes of Conduct, DASA School Employee Training, Dignity Act Coordinators, and Student Instruction on Anti-Discrimination/Harassment Principles.

1. Codes of Conduct

The overwhelming majority of responding districts have written codes of conduct prohibiting harassment, bullying, and/or discrimination against students by employees or students on every protected basis set forth in DASA.⁸ However, more than two years after the Act went into effect, a small number of districts’ codes of conduct still lacked explicit reference to numerous protected bases, including “weight,” “ethnic group,” and “religious practice.”

Regarding dissemination of codes of conduct, the overwhelming majority of responding districts post codes of conduct to their websites and provide plain language versions of them to students at assemblies at the beginning of each school year. Districts have adopted different approaches to providing age-appropriate versions of their codes of conduct to students. At minimum, most districts have developed one version for grades K-5, with another version or versions for grades 6-12, or grades 6-8 and 9-12. Several districts reviewed the age-appropriate summary codes of conduct at individual class meetings, beginning at grade 7. However, a small minority of districts stated that, as of fall 2014, they still had yet to develop age-appropriate plain language versions of their codes of conduct for dissemination to students.

Approximately seventy percent of responding districts mail a summary code of conduct to persons in parental relation before the beginning of the school year. The remaining districts use a variety of alternative approaches to provide these summaries to persons in parental relations, including: email; inclusion in a district newsletter, student handbook, agenda, or

⁸ The Act prohibits harassment and discrimination “based on a person's actual or perceived race, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender, or sex...” Educ. Law § 12.

calendar; dissemination at school orientation events; and placement of the summary/code of conduct on a district website. Of those districts that place the summary/code of conduct on a website, only a small number indicated that they provide a link to persons in parental relation or otherwise affirmatively indicate to them that the summary/code of conduct exists and is available on a website.

Most responding districts stated that they provide each teacher in a district school – whether newly-hired or returning – with a copy of the district’s complete code of conduct, leaving a small number of responding districts reporting that they do not provide each teacher in a school district with a copy of the district’s complete code of conduct. The most commonly stated reason for failing to provide such copies to teachers was the availability of a copy on a district website or electronic drive accessible to faculty. As a best practice, some districts set a deadline by which its schools must provide a copy of the code of conduct, and related materials, to each teacher, within several weeks of the start of the school year.

In terms of language access, approximately one-third of responding districts make translated copies of their codes of conduct available for review by students, persons in parental relation, school staff, or community members. Additionally, more than two-thirds of responding districts do not make such translated copies available to be mailed to such interested persons unless upon request. The minority of districts that do provide translated copies of their codes of conduct have made the codes available in one or more of the following languages: Spanish, Haitian Creole, Arabic, Bengali, Chinese, French, Korean, Russian, and Urdu.

2. DASA School Employee Training

Approximately ninety percent of responding districts have established guidelines for the schools to conduct training on awareness of potential incidents of harassment, bullying, or discrimination directed at students, and on how employees should respond to, and prevent, such incidents.

With respect to the majority of districts that have established such guidelines, most of them provided copies of those guidelines for our agencies’ review, as requested in the survey. Among these, there was a tremendous variation in the scope, depth, and thoroughness of the guidelines districts use to train their school staff on DASA and underlying principles about harassment, bullying, and discrimination. A number of districts provided our agencies the text of the DASA statute and nothing more. Many districts provided board of education policies prohibiting harassment, bullying, and discrimination. These policies rarely provided any further elaboration that defined those terms, or that would train school employees on how to identify incidents of harassment, bullying, or discrimination, or on how employees should document, report, or otherwise respond to such incidents. To the extent districts are using such general board policies as the only tool for school employee training around DASA, the policies are of limited use in fulfilling districts’ requirements to train school employees in how to identify and respond to incidents of harassment, bullying, and discrimination.

Other districts – approximately one-half of the respondents – provided copies of training materials that went into detail about DASA’s requirements and offered guidance as to how

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 needed by 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 one-third and one-half of districts, respectively, do not provide the name and contact information for Dignity Act Coordinators in school codes of conduct or in plain language summaries of those codes. Many survey responses indicated that districts were unaware of requirements 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, in their view, signs are not effective and students are instead taught how to report incidents of harassment, bullying, and discrimination. Districts also reported a variety of other methods they use to ensure students are aware of the Dignity Act Coordinators within their own schools, including assemblies, small group meetings, opening day orientations, and the distribution of DASA brochures and pamphlets, which contain the name and, in some cases, an email address that exclusively routes complaints to a school's Dignity Act Coordinator.

Regarding training for Dignity Act Coordinators, almost twenty percent of districts reported that they provide no additional training – beyond that provided to all school employees – concerning how to handle human relations in the areas of race, color, weight, national origin, ethnic group, religion, religious practices, disability, sexual orientation, gender, and sex. For those districts that do provide additional training to Dignity Act Coordinators, a minority use an attorney to provide this training, while a large majority rely upon their local Board of Cooperative Educational Services (“BOCES”) to provide such training. Districts conducting such additional training report that they provide additional guidance on such topics as human relations and how to handle any reports and/or complaints received by Dignity Act Coordinators.

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 it. 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 “break out” 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 Supports (“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 shootings; 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 outside of New York City, the majority classification – of reported material incidents as “other” in nature. A higher frequency of training, *e.g.*, 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 response to the survey indicates that a core problem may lie in the substance and content of materials districts use to train their personnel on DASA and its underlying principles.

To improve the content of these materials, and thereby promote DASA compliance, our agencies reviewed district submissions and identified a number of sets of exemplary training materials. Through these, our agencies distilled a number of core elements that promote

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 Regulations;⁹ (ii) the history, purpose, and significance of the law, including the scope and prevalence of harassment, bullying, and discrimination in schools in New York State and nationally; (iii) detailed factual examples and scenarios illustrating the definitions of harassment, bullying, and discrimination in action; (iv) how school employees can identify such behaviors when they are occurring on school property, at a school function or off of school property (where such conduct creates or would foreseeably create a risk of substantial disruption within the school environment and where it is foreseeable that the conduct might reach school property); (v) how school employees should communicate with students who may be victims of, or witnesses to, harassment, bullying, or discrimination; (vi) how school employees should handle allegations concerning harassment, bullying, or discrimination against a student by another school employee; and (vii) the mechanics of how school employees report allegations of harassment, bullying, and/or discrimination to the pertinent district official(s).

With respect to the last topic, training should include the type of information school employees need to obtain from affected students or witnesses in order to enable school principals, and ultimately superintendents, to provide accurate and comprehensive annual reports of material incidents to SED. Specifically, districts should consider including a copy of SED’s form “Report of Incidents Concerning School Safety and the Educational Climate” in training materials and discussing this form with school employees. With respect to these mechanics, and consistent with the Commissioner’s Regulations, districts should also include in their training materials the requirements that school employees who witness an incident of harassment, bullying, or discrimination or receive an oral or written report thereof (i) promptly orally notify the principal, superintendent, or their designee (*e.g.*, Dignity Act Coordinator) no later than one school day after receiving such information, and (ii) file a written report with the principal, superintendent, or their designee (*e.g.*, Dignity Act Coordinator) no later than two school days after making an oral report.¹⁰

In order to assist districts in fulfilling their obligations under DASA, OAG and SED have developed a set of model training materials and enclosed a copy with this letter. These materials may be useful for districts to consider when conducting training of school employees. The materials will be updated periodically and made available on the websites for SED and the New York State Center for School Safety.

Regarding the last topic – the mechanics of reporting material incidents of harassment, bullying, or discrimination – OAG and SED also have developed and enclosed guidance to

⁹ See Educ. Law § 11(7) (harassment and bullying); 8 NYCRR §100.2(jj)(1)(vii) and (kk)(1)(vii) (discrimination); *see also* A Resource and Promising Practices Guide for School Administrators & Faculty, Appendix A (Dignity for All Students Act Glossary and Acronym Guide), available at <http://www.p12.nysed.gov/dignityact/rgappendixa.html> (harassment, bullying, and discrimination).

¹⁰ See Commissioner’s Regulations Part 100, 8 NYCRR § 100.2(kk)(2)(i), (ii).

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 (*see* 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 persons in parental relation who have limited English proficiency. This fact is also especially troubling given that at least two of the bases the Act identifies as common targets for student harassment, bullying, and discrimination – national origin and ethnic group – are sometimes associated with students (and their families) who may be non-native English speakers. Districts are encouraged to ensure that their codes of conduct and plain language summaries of the same are, in the first instance, translated into high-incidence languages (other than English) spoken by students within their districts. Districts should also develop plans to ensure the timely translation of such codes of conduct and plain language summaries into other languages upon request by a student, parent, or community member.

3. Eliminating gaps in the appointment of Dignity Act Coordinators and ensuring students are aware of their in-building Coordinators. Nearly one-half of all responding districts reported vacancies in school Dignity Act Coordinators that exceeded the permitted time limits set forth in the Commissioner's Regulations. That is, almost one-half of reporting districts either did not immediately appoint an interim Coordinator in the event of such a vacancy, or appoint a permanent Coordinator within 30 days of such vacancy.¹¹ Dignity Act Coordinators serve at least two functions critical to successful implementation of DASA: (i) as a resource for students experiencing bullying, harassment, or discrimination at school; and (ii) as the typical designee for a principal in reporting such materials incidents at a school. Accordingly, both the qualitative and quantitative dimensions of the Dignity Act are compromised when districts do not appoint interim and permanent Dignity Act Coordinators within the time period set forth in the relevant regulation. Districts should develop and institute procedures to ensure the

¹¹ *See* Commissioner's Regulations Part 100, 8 NYCRR § 100.2(jj)(4)(viii) (“[i]n the event a Dignity Act Coordinator vacates his or her position, another eligible employee shall be immediately designated for an interim appointment as Coordinator, pending approval of a successor Coordinator by the applicable governing body ... within 30 days of the date the position was vacated”).

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

It is also essential that students have access to the name and location of their Dignity Act Coordinators, in real time and within their physical school environments. As discussed above, approximately twenty percent of districts do not post the name and contact information for Dignity Act Coordinators in highly visible areas of each school building. While our agencies appreciate that districts have developed other methods for notifying students of their school Dignity Act Coordinators – *e.g.*, through school assemblies or opening day orientations – such forms of notification are not complete substitutes for the requirement set forth in the Commissioner’s Regulations for at least two reasons. First, the departure of a Dignity Act Coordinator during the course of a school year may render inaccurate the information provided to students at, for example, an opening day orientation or assembly. Second, and more importantly, in the immediate aftermath of an incident of bullying, harassment, or discrimination a student may not recall information provided at an assembly or orientation held weeks, or even months, prior. In such instances, the posting of the name/location of a Dignity Act Coordinator in a highly visible area of the school itself can provide critical information to a student possibly in distress. All districts should ensure that such signage is posted for students and updated each time a school’s Dignity Act Coordinator changes.

4. Drafting age-appropriate plain language versions of codes of conduct. The fact that some districts, at the two-year mark from DASA’s implementation date, had yet to develop age-appropriate plain language versions of their codes of conduct is troubling. Our agencies have reviewed codes of conduct provided by many districts and believe that many students – including middle school, but particularly elementary school students – could have trouble comprehending their meaning in the form submitted with the survey. Another helpful use of age-appropriate codes of conduct is the resource they provide to parents and families in helping their children understand, in familiar language and terms, what is expected of them when they attend their schools. All districts should ensure that they have age-appropriate versions of their codes of conduct.

5. Ensuring both teachers and parents are aware of protections afforded to students under district codes of conduct. Our agencies support cost-effective methods allowing districts to fulfill their duty to mail a summary code of conduct to persons in parental relations—*e.g.*, the use of email or inclusion in other district materials provided to such persons. However, a concern arises when these methods result in passive availability of such materials, as opposed to affirmative notification. For example, of those districts that place the summary or full code of conduct on a website, only a small number indicated that they provide a link to persons in parental relation or otherwise affirmatively indicate to them that the summary/code of conduct exists and is available on a website. A best practice would be to provide affirmative notification of where such materials are available – *e.g.*, an email notification with a link to the page of the district/school website – in order to maximize the chances that persons in parental relation are aware of the protections DASA affords to students, and what behavior is expected of students at school. A similar best practice holds true for teachers as well. As noted above, a small number of districts stated that they do not provide each teacher – whether newly-hired or returning – with a code of conduct, namely because such materials are available on a website or other electronic

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 DASA and provide safe and supportive learning environments for all students.

Encls.



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ATTACHMENT 1
DIGNITY FOR ALL STUDENTS ACT
GUIDANCE ON INVESTIGATING, RESPONDING, AND REPORTING
August 2016

The following guidance document is intended to set forth the duties of a school/district as required by the Dignity for All Students Act (“DASA” or “Dignity Act”). The guidance begins with an overview of school/district duties; then addresses how incidents should be investigated by Dignity Act Coordinators or school personnel, including the use of a sample DASA Incident Reporting Form; then discusses school development of a plan in response to a finding that an incident was material; and concludes with a discussion of district reporting requirements to the New York State Education Department (“SED”) and document retention.

Overview of School and District Duties Under DASA:

As a general matter, DASA requires schools to provide students, staff, and persons in parental relation with information about the Dignity Act; what constitutes bullying, harassment, and discrimination; the identity of the Dignity Act Coordinator for each school; and the incident reporting system implemented by the school/district. (This information should also be presented in languages other than English for limited English proficient students and persons in parental relation.)

More specifically, DASA requires every school district “to create policies, procedures and guidelines” that create a school environment free from harassment, bullying, and discrimination. These policies must serve the following functions:¹

- Identify an administrative designee to receive reports of harassment, bullying, and discrimination (*i.e.*, the Dignity Act Coordinator);
- Enable students and parents to make an oral or written report to school personnel;
- Require school employees to notify an administrator or designee (*e.g.*, Dignity Act Coordinator) within one school day of witnessing or receiving a report of harassment, bullying, or discrimination, and to file a written report with such designee no later than two school days after such oral report/notification;

¹ N.Y. Education Law (“Educ. Law”) §13; 8 NYCRR §100.2(jj); 8 NYCRR §100.2(kk).

- Require administrators or a designee (*e.g.*, Dignity Act Coordinator) to lead a thorough investigation of all reports of harassment, bullying, and discrimination which must be completed promptly after the receipt of any written report;
- Upon the verification of harassing, bullying, and/or discriminatory behavior, require the school to take prompt action(s) reasonably calculated to end the harassment, bullying and discrimination, to 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;
- Prohibit retaliation against any individual who reports or assists in the investigation of harassment, bullying, or discrimination;
- Develop a school strategy to prevent harassment, bullying, and discrimination;
- Require school leaders to make a regular report (*i.e.*, at least once during each school year) to the superintendent regarding data and trends related to harassment, bullying, and discrimination;
- 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;
- Require that all school employees, students, and parents receive a copy of the district's policies, including the process for reporting harassment, bullying, and discrimination, at least annually; and
- Ensure that a current version of the district's policies and procedures, including an incident report form, are maintained on the district's website, if one exists.

Investigation of Incident / DASA Incident Reporting Form

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 form is attached. The sample form includes required components needed to record an incident and subsequent investigation of alleged harassment, bullying, or discrimination and can be customized based on the individual needs of each school. For example, district and school leaders should consider collaborating with pupil personnel services professionals to ensure the age appropriateness of any form and reporting procedures. Students should also be informed of the process and procedure for investigations, including how and with whom information regarding the incident will be shared while maintaining confidentiality.

When an incident occurs, a student should go to the Dignity Act Coordinator, an administrator, or staff member that (s)he trusts. The one school day verbal/two school day written rule should be observed, as follows:

- If a staff member was contacted, (s)he should report the incident to a school leader (*i.e.*, Principal, Assistant Principal), and/or designee (*i.e.*, Dignity Act Coordinator) within one school day.

- 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, and/or designee (*i.e.*, Dignity Act Coordinator) is required to lead or supervise a thorough investigation. The investigation should include the following steps:

- Interview the target of the incident, separately and away from the alleged aggressor first;
- Interview the student accused of the harassment, bullying, or discrimination;
- Interview any witnesses to the harassment, bullying, or discrimination, including teachers or staff;
- Obtain any other objective evidence from recording devices (*e.g.*, cameras) or, in the case of cyberbullying, copies of tweets, emails, Facebook pages, *etc.*;
- 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; and
- Contact law enforcement when the harassment, bullying and/or discriminatory behavior is believed to constitute criminal conduct.

The person(s) in parental relation of each 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.² Some indicators to assist with this determination include: whether the incident has been repeated; whether there is an imbalance of power between the parties (*e.g.*, an older vs. younger student and/or physically larger vs. smaller student); or whether the behavior does not fall within the DASA definition of an incident of bullying, harassment, or discrimination, or may be other prohibited behavior addressed by the school’s Code of Conduct.

Each school should maintain and keep on file all completed DASA Incident Reporting Forms, including investigative notes (*e.g.*, Part II of attached sample form), to allow for the calculation and review of annual data that must be reported to SED by the district concerning the aggregate number of material (verified)³ incidents within the district. The district should inform each school of the appropriate records retention policy governing such DASA Incident Reporting Forms to ensure that schools are properly maintaining these records and drawing accurate data from them on an annual basis.⁴

² 8 NYCRR §100.2(kk)(1)(ix).

³ 8 NYCRR §100.2(kk)(1)(ix).

⁴ For more information regarding records retention and disposition for school districts and BOCES, please see: http://archives.nysed.gov/records/retention_ed-1.

Development of Plan to Address and Curb Incidents of Harassment, Bullying, and/or Discrimination

Following the investigation, as set forth above, the Dignity Act Coordinator or school leader must make a determination as to whether the incident is “material” (verified). The Commissioner’s Regulations define a material incident of harassment, bullying and/or discrimination as 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,” including a verified incident or series of related verified incidents of harassment or bullying that occur off school property, are the subject of a written or oral complaint, and create or would foreseeably create a risk of substantial disruption within the school environment, where it is foreseeable that the conduct, threats, intimidation or abuse might reach school property.⁵

If the school’s investigation reveals that an incident constitutes a material (verified)⁶ incident of bullying, harassment and/or discrimination, the Dignity Act Coordinator and other school/district personnel should develop a plan to address the hostile environment and end the bullying. This can occur through a variety of methods, *e.g.*, education, counseling of the target and the aggressor (separately), implementing restorative practices, behavior contracts, disciplinary proceedings up to and including suspension, and, if necessary, the involvement of law enforcement. Other staff may be included to help develop the plan with the Dignity Act Coordinator and leaders within the school.

Appropriate staff and students should be made aware of the plan, so that it can be reinforced and applied with consistency. The person(s) in parental relation of both the target and the aggressor should be contacted about the plan, in accordance with district policies (and applicable state and federal laws and regulations) concerning student confidentiality and privacy.

As a part of the plan, school/district personnel should also advise the target of the incident of steps to take, and whom to contact, if the bullying, harassment, and/or discriminatory behavior continues to occur.

The final DASA Incident Reporting Form should include a record of the investigation, the plan developed, any action taken to end the harassment, bullying, or discrimination (including any disciplinary actions taken against an aggressor), as well as a schedule for monitoring the situation, in order to ensure the plan is working. The school leader and/or designee (*i.e.*, Dignity Act Coordinator) and other appropriate personnel should also develop a plan to follow-up with the target at regular intervals, in order to determine if the bullying, harassment, or discrimination has resumed.

District Reporting of Data to SED and Document Retention Post-Reporting

District reporting: The principal of each school within a district has a duty to report all DASA material incidents in the principal’s annual report to the district’s superintendent. Each district superintendent, in turn, has a duty to accurately report all DASA material incidents to SED annually through the School Safety and the Educational Climate online reporting system that includes Violent and Disruptive Incident Reporting (“VADIR”) and DASA reporting.

⁵ See Educ. Law §15; 8 NYCRR 100.2(kk)(1)(ix).

⁶ 8 NYCRR §100.2(kk)(1)(ix).

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

- Retention of all DASA Incident Reporting Forms and investigatory materials by the Dignity Act Coordinator, consistent with the district's general document/data retention policies;
- No less than once per semester, and preferably twice per semester, each school's Dignity Act Coordinator should review the DASA Incident Reporting Forms for that interval and provide summary data to the school's principal reflecting:
 - The number of incidents reported for that interval;
 - The number of cyberbullying incidents reported for that interval;
 - The number of reported incidents at the school for that interval that were found to be material; and
 - The type of bias involved in each material (verified)⁷ incident, if any.
- The school principal should review and retain the summary data forwarded by the school's Dignity Act Coordinator, and include the summary data for the school year in the principal's annual report to the superintendent. This report must be provided by the school principal to the superintendent to allow sufficient time for the superintendent to review such data prior to submitting the data to SED.
- Once the superintendent has received each school principal's annual report and the summary data contained therein, the superintendent must provide an accurate report of all material incidents for that school year to SED when the online reporting portal opens at the end of that school year.

Document retention for non-material incidents. If an investigation fails to provide sufficient information to ascertain whether an incident is material (verified),⁸ the DASA Incident Reporting Form and investigation report should still be retained by the Dignity Act Coordinator and school leader.

All DASA Incident Reporting Forms should be kept on file or maintained electronically by the schools in a centralized place for the period of time required by the New York State Records Retention rules for such school records.⁹ Furthermore, DASA Incident Reporting Forms should be filed separately from, and not kept as a part of, a student's school record.

⁷ 8 NYCRR §100.2(kk)(1)(ix).

⁸ 8 NYCRR §100.2(kk)(1)(ix).

⁹ For more information regarding records retention and disposition for school districts and BOCES, please see http://archives.nysed.gov/records/retention_ed-1.

SAMPLE for District Adaptation

NOTE: This form is being provided for informational purposes only and is intended to be illustrative rather than exhaustive. Districts, BOCES, and charter schools are advised to consult with their attorneys regarding the implementation of the Dignity Act.

_____ District is committed to providing a safe, supportive environment free from harassment, bullying and discrimination for all students. The District encourages the involvement of staff, students, parents and community members in the implementation and reinforcement of the Dignity for All Students Act (“DASA”).

If you believe you, or someone else, has been the target of harassment, bullying, cyber-bullying, and/or discrimination, please use this form to report all allegations.

School/district personnel witnessing an incident or receiving a report of an incident must complete and submit this written report within two (2) school days. *NOTE: School/district personnel must also orally notify the principal, superintendent or their designee no later than one school day after witnessing or receiving a report of an incident.*

All complaints will be treated in a confidential manner. Anonymous reports may limit the district’s ability to respond to the complaint. A prompt and thorough investigation will be conducted for all incident reports.

Please complete this form and return it to a school administrator or Dignity Act Coordinator.

SAMPLE DASA Incident Reporting Form (For District/School Files Only)

I. To be completed by person reporting the incident (or the person receiving the complaint and/or investigating the incident)

School District: _____

School: _____

Dignity Act Coordinator: _____

Position: _____

Today’s date: _____ **Name of person reporting incident:** _____

Role of person reporting incident (*Check one*)

Student Target Student (witness) Parent/Guardian Staff Member Other _____

Phone: _____ **Email:** _____

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?

- I was directly involved in the incident I observed the incident I heard about the incident

Where did the incident happen? (Check all that apply)

- | | | |
|---|---|---|
| <input type="checkbox"/> On school property | <input type="checkbox"/> Cafeteria | <input type="checkbox"/> On a school bus |
| <input type="checkbox"/> Classroom | <input type="checkbox"/> Gym | <input type="checkbox"/> Off school property |
| <input type="checkbox"/> Hallway | <input type="checkbox"/> Locker Room | <input type="checkbox"/> Electronic Communication |
| <input type="checkbox"/> Bathroom | <input type="checkbox"/> At a school function | <input type="checkbox"/> Other (describe): _____ |

Type of incident (Check all that apply)

- Physical contact (kicking, punching, spitting, tripping, pushing, taking belongings)
- Verbal threats (gossip, name-calling, put-downs, teasing, being mean, taunting, making threats)
- Psychological (non-verbal actions, spreading rumors, social exclusion, intimidation)
- Abuse (actions or statements that put an individual in fear of bodily harm)
- Cyberbullying (misusing technology/social media to harass, tease, threaten, post pictures (sexting))
- Other (describe): _____

Who was involved in the incident?

- Student Employee Both student and employee

Describe the specific nature of the incident. What happened? (Be as specific as possible). What did the alleged offender say or do? Include any copies of text messages, emails, etc. if possible.

(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)*

- | | | |
|--|---|---|
| <input type="checkbox"/> Race | <input type="checkbox"/> Religion | <input type="checkbox"/> Sex |
| <input type="checkbox"/> Color | <input type="checkbox"/> Religious practice | <input type="checkbox"/> Other
(describe)_____ |
| <input type="checkbox"/> Weight/size | <input type="checkbox"/> Disability | |
| <input type="checkbox"/> National origin | <input type="checkbox"/> Sexual orientation | |
| <input type="checkbox"/> Ethnic group | <input type="checkbox"/> Gender | |

Names of others who may have witnessed the incident:

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

- No Yes Number of days student was absent:_____

Does the situation continue to occur? Yes No

What do you think should be done about the situation?

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

FOR SCHOOL LEADERS OR DESIGNEE ONLY

II. The following section is for documenting the school’s investigation to be completed by the school leader and/or designee (i.e. Dignity Act Coordinator)

Results of Investigation (include summary of information gathered from interviews):

(Add extra pages if needed)

Did the investigation verify that a material incident of bullying, harassment, and/or discrimination occurred? Yes No

If no, why?

Description of plan to eliminate bullying and reduce the hostile environment:

Contact with parents/guardians of target – date: _____

Contact with parents/guardians of aggressor(s) – date: _____

Contact with law enforcement – date: _____

Results:

Remediation: *(Check all that apply)*

- Education
- Counseling
- Disciplinary *(Code of Conduct application)* _____
- Restorative Justice or other program
(describe) _____
- Law Enforcement
- Other *(describe)* _____

Who needs to be informed about the plan (respect confidentiality)? *Check all that apply.*

- Students
- Administration
- Parents
- School staff
- Other _____

Follow up review of plan (is plan working?) in _____ weeks

Target's response to plan to determine effectiveness:

Additional plan revisions and comments, if needed:

Keep this report on file to calculate yearly data reported to New York State Education Department.