



New York State Office of the State Comptroller
Thomas P. DiNapoli

Division of State Government Accountability

Implementation of the Dignity for All Students Act

State Education Department



Report 2016-S-28

October 2017

Executive Summary

Purpose

We evaluated the steps the State Education Department (Department) has taken to ensure that: school district policies and practices comply with the Dignity for All Students Act (DASA); and school districts report material incidents of discrimination and harassment, as required, to the Department. We also evaluated whether the Department issued timely DASA guidance to school districts that adequately addresses transgender and gender nonconforming students. The audit covered the period July 1, 2012 through April 4, 2017. Also, we limited the audit to school districts outside of New York City.

Background

DASA seeks to provide students in New York with a safe and supportive environment free from discrimination, harassment, and bullying on school property, on school buses, and at school functions. Its initial provisions, which took effect July 1, 2012, included curriculum and annual reporting requirements and required schools to designate a trained Dignity Act Coordinator (DAC). An amendment effective July 1, 2013 defined cyberbullying and added requirements for investigating and reporting alleged incidents. The Department provides guidance to assist school districts in complying with DASA requirements, and makes school incident data available to the public on its website. For the school year ended June 30, 2016, school districts (excluding New York City) reported 19,410 incidents statewide under DASA. Also, the Department recently revamped its regulations to change the way schools report incidents. The new regulations take effect July 1, 2017.

Key Findings

- The Department issued adequate DASA guidance to schools in a timely manner. However, while most schools we visited had implemented key requirements, such as designating DACs, many had not implemented some critical requirements, such as ensuring that DAC contact information is widely accessible. Some schools also did not provide DASA training to non-instructional personnel.
- The Department's guidance addressing transgender and gender nonconforming students has been both timely and adequate. However, certain schools may not be accurately reporting some DASA incidents or may not be reporting them at all. In addition, several schools were not able to identify which DASA incidents they reported to the Department, and incident records often were not adequate to clearly demonstrate whether or not the incidents were reportable.
- Officials at most schools we visited were not aware of DASA record retention requirements, and some officials indicated that they purge DASA records sooner than DASA allows.

Key Recommendations

- Develop a risk assessment that incorporates known and suspected weaknesses in DASA implementation, and commit sufficient resources to promote school compliance with DASA requirements.
- Work with training partners, such as the Center for School Safety, to enhance DASA training to better meet user needs. Efforts should include (but not be limited to): identifying resources to

facilitate proper electronic record keeping and reporting; and ensuring that training content includes the details that need to be documented in incident investigation records as well as examples that clearly distinguish reportable from non-reportable incidents.

- Remind school and district officials of DASA record retention requirements and address areas of confusion that compromise compliance with these requirements.

Other Related Audits/Reports of Interest

[State Education Department: Compliance With the Safe Schools Against Violence in Education Act – Follow-Up \(2016-F-2\)](#)

[State Education Department: Compliance With the Safe Schools Against Violence in Education Act \(2013-S-71\)](#)

[Division of Criminal Justice Services: Hate Crime Reporting \(2013-S-67\)](#)

**State of New York
Office of the State Comptroller**

Division of State Government Accountability

October 13, 2017

Ms. MaryEllen Elia
Commissioner
State Education Department
State Education Building – Room 125
89 Washington Avenue
Albany, NY 12234

Dear Commissioner Elia:

The Office of the State Comptroller is committed to helping State agencies, public authorities, and local government agencies manage government resources efficiently and effectively and, by doing so, providing accountability for tax dollars spent to support government operations. The Comptroller oversees the fiscal affairs of State agencies, public authorities, and local government agencies, as well as their compliance with relevant statutes and their observance of good business practices. This fiscal oversight is accomplished, in part, through our audits, which identify opportunities for improving operations. Audits can also identify strategies for reducing costs and strengthening controls that are intended to safeguard assets.

Following is a report of our audit entitled *Implementation of the Dignity for All Students Act*. The audit was performed pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution and Article II, Section 8 of the State Finance Law.

This audit's results and recommendations are resources for you to use in effectively managing your operations and in meeting the expectations of taxpayers. If you have any questions about this report, please feel free to contact us.

Respectfully submitted,

*Office of the State Comptroller
Division of State Government Accountability*

Table of Contents

Background	5
Audit Findings and Recommendations	7
Department Guidance	7
School and District DASA Policies and Practices	9
School and District Reporting of Material Incidents	11
Recommendations	14
Audit Scope, Objectives, and Methodology	14
Authority	15
Reporting Requirements	16
Contributors to This Report	17
Exhibit A	18
Exhibit B	19
Exhibit C	20
Exhibit D-1	21
Exhibit D-2	22
Exhibit E-1	23
Exhibit E-2	24
Agency Comments	25

State Government Accountability Contact Information:

Audit Director: John F. Buyce

Phone: (518) 474-3271

Email: StateGovernmentAccountability@osc.state.ny.us

Address:

Office of the State Comptroller
 Division of State Government Accountability
 110 State Street, 11th Floor
 Albany, NY 12236

This report is also available on our website at: www.osc.state.ny.us

Background

New York State's Dignity for All Students Act (DASA) seeks to provide students in New York with a safe and supportive environment free from discrimination, harassment, and bullying on school property, on school buses, and at school functions. Research has shown that students who are bullied or harassed are more likely to miss days of school, experience higher rates of depression, and have lower academic achievement and aspirations. Provisions of Article 2 of the Education Law, effective July 1, 2012, include curriculum and annual reporting requirements and require schools to designate a trained Dignity Act Coordinator (DAC). An amendment effective July 1, 2013 defined cyberbullying and added other requirements for investigating and reporting alleged incidents. The State Education Department (Department) provides guidance to assist school districts in complying with DASA requirements, and makes school incident data available to the public on its website.

DASA requires schools to provide instruction for students that supports development of a school environment free of harassment, discrimination, and bullying and that attempts to raise awareness and sensitivity about different types of discrimination. The instruction should emphasize discouraging these acts and also promote safe, responsible use of the Internet and electronic communications. The law also requires that school codes of conduct include provisions prohibiting these acts. Schools that maintain websites should post their codes of conduct, and any updates or amendments to them, to their websites.

Beginning with the 2013-14 school year, school districts are also required to implement an annual training program to promote a discrimination-free school environment. The program must include school and district administrators and instructional as well as non-instructional staff, such as lunchroom and maintenance personnel. All people who have a role in implementing DASA must be adequately informed about their obligations to report incidents they witness or are told about.

Department regulations require each school district, board of cooperative educational services (BOCES), and charter school to submit an annual report of material incidents of harassment, bullying, and/or discrimination that occur during the school year and that involve one or more of the following 12 bias categories: race; ethnic group; national origin; color; religion; religious practice; disability; gender; sexual orientation; sex; weight; and an "other" category for incidents not covered in those areas. A single incident may involve and be reported in more than one category. School districts must also separately report incidents of cyberbullying, defined as harassment or bullying that occurs through any form of electronic communication that occurs in these categories. Generally, school districts report the data on behalf of schools using a Department online portal. Once it has received all school data, the Department posts the incident totals on its public website by school, by category, for both discrimination and harassment and cyberbullying incidents. Incident data for New York City is reported separately from the rest of the State.

Regulations define a material incident as a single verified incident or series of related verified incidents where a student and/or employee on school property or at a school function subjects

a student to harassment, bullying, and/or discrimination. Covered incidents can include threats, intimidation, and abuse. Material incidents also include those that occur off school property and that risk disrupting the school environment. School employees who either witness or receive an oral or written report of an incident must promptly notify a designated person both orally and in writing. School officials must ensure that all reported incidents are promptly investigated. When an investigation verifies that a material incident of harassment, bullying, and/or discrimination has occurred, they must take prompt action to attempt to end the offending behavior.

DASA is similar in intent to the Safe Schools Against Violence in Education Act (SAVE), which took effect in 2001 to address issues of school safety and violence prevention in New York's public schools. To comply with SAVE, school districts collect school-level incident information and submit a Violent and Disruptive Incident Report (VADIR) to the Department. VADIR incorporates 20 reporting categories, including one – Intimidation, Harassment, Menacing, or Bullying – that is similar to DASA reporting categories, all of which relate to discrimination and harassment. Together, DASA and VADIR reporting compose the Department's Report on School Safety and the Educational Climate, and are intended to provide information to assist schools and their partners in reducing incidents that negatively affect the educational environment. It is possible for an incident to be reportable under both DASA and VADIR requirements.

In September 2016, the Department and members of the New York State Safe Schools Task Force proposed a method of reframing existing incident reporting requirements under both laws in an effort to simplify school incident reporting and better identify student safety issues. The new regulations were approved by the Board of Regents in December 2016 and took effect July 1, 2017. They incorporate both DASA and VADIR into one reporting structure that uses nine total categories, including one for material incidents of discrimination, harassment, and bullying. Given the magnitude and importance of the changes in reporting, schools could be seeking guidance from the Department in the coming months about how to best implement the changes. The Department's Student Support Services Unit has four individuals who work on DASA and VADIR activities, and their combined time in these areas totals about 1.5 full-time equivalent.

Our audit was limited to schools and school districts outside of New York City, and covered the period July 1, 2012 through April 4, 2017. For the school year ended June 30, 2016, 2,901 public schools in the State (excluding New York City) reported 19,410 DASA incidents. (See Exhibit C for a map of the number of schools by county throughout the State; Exhibit D-1 for a map of the number of reported DASA discrimination and harassment incidents [excluding cyberbullying] by county; and Exhibit D-2 for the number of reported DASA cyberbullying incidents by county.)

Audit Findings and Recommendations

The Department generally provided effective oversight of DASA implementation and took steps to support school and district implementation of, and compliance with, DASA. These efforts included issuing adequate and timely guidance documents, one of which addresses transgender and gender nonconforming students, and providing technical assistance to selected schools to support their implementation of DASA and VADIR requirements. We found that most schools had implemented some of DASA's key requirements, such as those related to anti-bullying instruction and designating DACs. However, we also found gaps in school and district compliance with some key DASA requirements. For example, more than half of the schools we visited did not communicate DAC contact information throughout the school, and some did not train non-instructional personnel, creating a risk that bullying incidents they witness or learn about may not be addressed appropriately, if at all.

For the school year ended June 30, 2016, school districts (excluding New York City) statewide reported 16,938 incidents of discrimination and harassment (excluding cyberbullying) under DASA and 2,472 incidents of cyberbullying. (See Exhibits D-1 and D-2 for maps of incidents by county.) However, our review of incident records revealed substantial weaknesses, ranging from schools underreporting incidents and reporting non-DASA incidents as DASA incidents to their inability to identify which incidents they actually reported to the Department. Some incident records lacked important details and were insufficient to clearly demonstrate whether they represented incidents reportable under DASA. In addition, many schools were not aware of record retention requirements, and their stated practices for retaining incident records did not comply with these requirements.

Department Guidance

The Department has issued five major guidance documents and two updated documents, as well as other DASA guidance memos. For example, its DASA brochure lists the key provisions of DASA and their effective dates. Another resource, the Department's document entitled "The New York State Dignity for All Students Act Resource and Promising Practices Guide for School Administrators & Faculty," is more comprehensive, and includes not only DASA information but also guidance related to progressive discipline and the needs of foster children in the school environment. It also includes links to other State and organization resources. Other, more recent Department guidance included a February 2017 memo and a joint press release with the Attorney General, both of which cited concerns about immigration-related harassment in schools and reaffirmed the State's commitment to keep schools safe. The Department generally emails these documents with a memo to school administrators (including school principals and district superintendents), sometimes accompanied by a press release. Additionally, Student Support Services personnel work with the New York State Center for School Safety (Center for School Safety), a statewide technical assistance center operated by Measurement Incorporated, to provide direct support to schools and districts with a focus on DASA and VADIR compliance.

The Department has also taken steps to address cyberbullying, and began requiring schools to

report cyberbullying incidents beginning with the 2013-14 school year. The increasing use of electronic devices by school-age children and youth has resulted in new and often anonymous ways of harassing and bullying that may negatively affect the learning environment. A study released in November 2016 by the Siena College Research Institute, AT&T, and the Tyler Clementi Foundation reported that 26 percent of upstate New York students in grades 6-12 have been cyberbullied, based on online interviews in 2016 with more than 1,200 students. To get students' perspectives and possible suggestions on addressing the problem of cyberbullying, in July 2016 the Commissioner of Education hosted an online session with high school students from Troy, Ogdensburg, New Rochelle, and Buffalo. Department officials intend to use the resulting information, in coordination with the Center for School Safety, to develop better training and guidance for schools.

The Department also collaborated with the Office of the Attorney General in 2014 to survey 719 school district superintendents to assess whether schools met their DASA obligations. The survey responses were intended to identify best practices and to assist both agencies in providing support to enhance DASA compliance. The survey results (which were based on self-reported information), when considered in context with district incident reporting, indicated there were problems with DASA implementation, such as potential confusion and uncertainty about how to classify incidents. The Department released the results (Survey Results) to school principals on August 31, 2016, along with recommendations to improve DASA training, provide codes of conduct in age-appropriate language as well as in languages other than English, reduce vacancies in DAC positions and communicate the presence of the DAC, and ensure teachers and parents are aware of the codes of conduct. They also included guidance on investigating, responding to, and reporting incidents, as well as a sample DASA incident reporting form.

During our site visits, some school officials said the Survey Results came at a time when they were already busy with preparations for the new school year. Officials from three schools were not aware of them at the time of our visits, which were in some cases nearly two months after their release. Other officials, however, said they plan to use the Survey Results to help inform their DASA efforts.

Timeliness and Adequacy of Guidance on Transgender and Gender Nonconforming Students

The Department's guidance has generally been timely and adequate in assisting schools and districts to provide a safe educational environment for transgender and gender nonconforming students. In addition to the regulations and guidance documents the Department issued on its website when DASA first took effect, it has continued to issue new or amended guidance that specifically addresses transgender and gender nonconforming students, as circumstances changed.

In July 2015, the Department issued its key guidance in this area, "Guidance to School Districts for Creating a Safe and Supportive School Environment for Transgender and Gender Nonconforming Students" (Transgender Guidance), which it sent to school administrators via email and posted on its website. To help ensure its guidance would be useful for school boards and administrators in

developing policies and practices related to these students, the Department sought input from, and worked with, advocacy groups and other stakeholders, such as the New York Civil Liberties Union and the New York State School Boards Association. The resulting Transgender Guidance includes relevant definitions; describes the roles of administrators, faculty, staff, and students; and provides example situations and guidance on how to address them. Schools can use the guidance as a resource when considering how to meet students' needs and when amending school policies or practices.

Though neither "transgender" nor "gender nonconforming" are defined in DASA or its regulations, Department guidance uses "transgender" as an adjective describing a person whose gender identity doesn't correspond to their assigned sex at birth. "Gender identity" is defined as an individual's internal sense of being a man, a woman, a boy, a girl, or something outside of these binaries, and is not necessarily visible to others. According to the guidance, "gender nonconforming" describes people whose gender expression differs from stereotypic expectations. In New York, transgender individuals are protected from discrimination under Human Rights Law regulations and transgender students are covered under DASA.

Personnel at 13 of the 20 schools we visited indicated that the Transgender Guidance was adequate or helpful, regardless of whether they were aware of having transgender students in their school population. Of the remaining seven schools, six expressed no opinion and only one found the guidance inadequate. During the 2015-16 school year, the Department provided targeted technical assistance to address specific inquiries about meeting the needs of transgender and gender nonconforming students. In April 2016, the Department delivered a "Safe Schools for All Presentation" at Ulster BOCES that included discussion of the Transgender Guidance and covered trends, terms, and concerns related to these students.

Nevertheless, the uncertain legal and regulatory environment currently affecting schools' options and obligations for addressing the needs of transgender students has resulted in uncertainty among some school officials. Areas under discussion nationally often center on restroom and locker room accommodations and whether transgender students' use of separate facilities should be mandatory or optional. Some officials are delaying policy development until issues are more settled, particularly at the federal level. Because the pertinent laws and regulations may continue to change, there could be some confusion and tentativeness among school and district officials regarding the steps they should take to achieve full DASA compliance. Thus, it is likely that school officials will seek additional DASA guidance from the Department, and therefore, Department personnel should be prepared to provide such guidance as changing circumstances require.

School and District DASA Policies and Practices

Curriculum and Code of Conduct

All 20 schools we visited had programs or curriculum content that incorporated messages to discourage bullying and discrimination and to promote sensitivity and character development, as did their codes of conduct, as required. These approaches included Positive Behavior Intervention

Support (PBIS), a program designed to promote desirable academic and social behavior outcomes for students, and restorative justice, which emphasizes collaborative problem-solving and the role of trust and respect in repairing harm. Other schools had clubs, mentoring programs, or peer mediation as part of their anti-bullying program. Schools also exhibited some form of visible anti-bullying message within the school building. For example, some schools had posters in hallways or cafeterias that encouraged respect or displayed colorful, illustrated anti-bullying messages. Officials at several schools said they emphasize anti-bullying messages during assemblies, morning announcements, and/or classes throughout the school year. We also saw other approaches to assist in communicating with students, such as:

- Making a “bully locker” or designated box available for anonymous student DASA reporting;
- Inviting an Assistant District Attorney to speak with students about social media issues;
- Placing a “bully button” on the school website to explore ways to report problems; and
- Collaborating with local businesses to develop positive behavior in students outside of school.

Dignity Act Coordinator

Each school must designate at least one employee who is trained to handle human relations in areas of race, religion, gender, sexual orientation, and “other” categories reportable under DASA to serve as the DAC for the school building. Department guidance suggests that schools consider multiple DACs to increase the likelihood that a student will consider one as someone they trust and can approach with a concern. All 20 schools we visited had a designated building DAC, and some had multiple DACs to meet student needs. For example, one school appointed both a male and a female DAC for student comfort, while another, in an effort to maintain continuity and build a trusting relationship, maintained a DAC for each grade level that remained with the students until graduation.

Because schools are sometimes the main or only source of information and access to help, visual in-school access to DAC contact information is critically important. When this information is not readily available, students seeking help are less likely to know who to contact and how to contact them, which can diminish the effectiveness of a school’s efforts to prevent and address bullying and discrimination. As such, regulations require that the name and contact information for the DAC be posted in highly visible areas of the school building, and made available at district and school-level administrative offices. Schools must also share, at a minimum, the DAC name and contact information with students’ parents. However, at 15 (75 percent) of the 20 schools we visited, the DAC name and contact information were not posted in highly visible areas of the school building. Of those, ten schools also did not make the DAC contact available in an administration office at the school. Thirteen schools (65 percent) did not provide the DAC name and contact information to students’ parents or guardians.

We also identified schools that provided students with more than the required access to DAC information. For example, one school posted the DAC’s picture along with contact information, and 15 schools posted incident reporting forms on the school/district website, providing an avenue to report concerns. We reviewed websites for an additional 50 schools (and in some

cases, the website for the district) to determine if DAC contact information was available online. Of the 50 websites, at least some DAC information was available on 42 (84 percent) of them. Also, some schools have set up online incident reporting, providing another route for incidents to reach a designated school official.

Training

Most of the schools we visited told us or demonstrated that they provided annual training to instructional employees that promotes a safe and supportive school climate and discourages harassment and bullying. However, officials from three schools said they do not train all of their non-instructional personnel. Gaps in their training create risk that important information may not reach staff who are in a position to address incidents timely and appropriately.

School and District Reporting of Material Incidents

Department guidance states that all public schools, BOCES, charter schools, and county vocational education and extension boards must maintain student conduct files. These files should include a description of incidents, including those not reported under DASA, and individual reports on incidents of discrimination and/or harassment, including cyberbullying incidents, that occur on school property, on the school bus, and/or at school functions. The Department requires schools to provide annual data about material incidents of discrimination and harassment (including cyberbullying) that occur in the 12 reporting categories. We found the Department's efforts to ensure that school districts accurately report material incidents of discrimination and harassment, as required, are generally adequate. These efforts include:

- Guidance on its website, including the DASA form and instructions and a glossary of terms;
- Technical assistance to schools to assist them in implementing both DASA and VADIR requirements, including assistance to 15 schools during the 2015-16 school year;
- Statewide training sessions during August 2016 to representatives of 180 school districts addressing DASA reporting and the responsibility of school districts; and
- Analyses of school annual reports for 2013-14 that showed higher than expected numbers of schools reported zero incidents, or reported a high number of incidents classified as "other" as opposed to a specific protected group. The results of these analyses were reported to schools in the August 2016 Survey Results.

Incident Reporting and Record Quality

Despite the quality and extent of guidance issued by the Department, we identified errors and deficiencies in incident records and reporting at 20 judgmentally selected schools we visited outside of New York City. We reviewed selected incident records, including cyberbullying, for the 2014-15 school year (the most recent data available at the time of our audit) to evaluate the 20 schools' compliance with incident reporting requirements. All of these schools used electronic student management information systems to record incidents reportable under DASA and VADIR and the related disciplinary actions. Of the 20 schools, 10 reported DASA incidents and 10 did not.

(Exhibit B presents detailed information about the 10 schools that reported no DASA incidents and our related site visit activity.)

Five of the ten schools that reported DASA incidents were not able to identify the incidents that they included in the annual report submitted to the Department. Further, incident records at many schools, even those that could identify the incidents they reported, often lacked important details or characterized incidents instead of clearly describing and detailing them. For example:

- One record characterized an incident involving a male and a female as “name calling,” but did not describe the specific name or include other supporting details that would otherwise have served as the basis for reporting the incident; and
- For another incident, the report filed in the sexual orientation category stated that a student “continued to make sexually harassing remarks to a classmate.” However, without additional and specific detail, it was unclear that sexual orientation was actually a factor in the incident.

Without certain important facts and details, the records available either did not substantiate that the incidents were reportable under DASA or did not provide enough information to determine the applicable DASA reporting category.

Schools That Reported Zero Incidents

Our analysis of DASA data for 2,153 schools showed that 678 (31 percent) reported zero incidents for each of the three school years from 2013-14 through 2015-16. (See Exhibits E-1 and E-2 for the number and percentage of schools, by county, that reported zero DASA incidents.) For example, all 39 schools in the Yonkers City School District reported zero incidents. We selected ten comparatively larger schools that reported zero incidents for the 2013-14 and 2014-15 years. (Note: Data for the 2015-16 year was not available at the time of our selection.) At eight of the ten schools, we identified 25 DASA incidents, some of which involved cyberbullying, that were not reported to the Department, including the following examples:

- One cyberbullying incident indicated police involvement, which suggests it was significant and reportable under DASA; and
- An incident record cited a pattern of bullying that persisted since the victim’s previous attendance at another school.

Schools That Reported Most Incidents as “Other”

Five schools in our sample reported a high percentage (87 to 100 percent) of their incidents in the “other” category, raising the possibility that incidents in specific categories, such as race or disability, may have been artificially low. Only two of the five schools could identify and provide records for the incidents they reported. We found that some incidents were erroneously categorized as “other.” For example, one incident should have been reported as sexual orientation, and two were not DASA incidents, including one case of truancy and another in which a school staff member was the victim. The other three schools were not able to identify the incidents they reported.

Schools That Reported Incidents in the Six Highest-Volume Categories

We selected five schools that each reported a high percentage of incidents in the six highest-volume incident categories (excluding “other”), including disability, gender, race, sex, sexual orientation, and weight. We assessed how schools identified the proper reporting categories and tried to identify possible best practices. Three of the five schools were able to identify and provide records for the incidents they reported to the Department. We identified at least one student-to-staff incident at each of these three schools that was reported under DASA, but should not have been. The other two schools were not able to identify the incidents they reported.

We attribute the reporting errors and deficiencies in incident records, in part, to school personnel’s lack of knowledge, experience, and training in identifying, documenting, investigating, and reporting DASA incidents. During our visits, officials at 17 of the 20 schools indicated that they struggle with interpreting or implementing DASA guidance and reporting requirements. Four years after DASA took effect, some schools continue to have difficulty identifying a material incident, and would like better descriptions of the categories and/or more examples of incidents to help them make proper incident classifications. Some school personnel also said they struggle with differing conceptions of what constitutes “bullying,” and they are unclear about their responsibilities to respond to and report cyberbullying incidents.

The training and experience of school officials who record both electronic and hard copy DASA incidents can directly affect the quality of the resulting records and the accuracy of what is reported to the Department. We observed that the responsible DASA personnel at several schools we visited lacked knowledge about, or access to, the electronic systems for DASA incidents. For example, at one school a person responsible for data entering DASA information was unable to demonstrate how to enter a DASA incident. At another school, the electronic system incidents had to be recorded first as a VADIR incident before a DASA drop-down menu enabled the recording of a DASA incident. Lack of training and/or expertise in using such systems, along with confusion about who has access to them, can contribute to errors and inefficiencies. In turn, this can compromise a school’s ability to: comply with prescribed reporting requirements; use records to identify and address patterns of harassment and discrimination; and support the decisions of school and district officials.

Although the 2013-14 and 2014-15 school DASA data exhibited indications of possible underreporting and misreporting, the Department did not express concerns about questionable reporting to district and school officials until August 2016, when it issued its Survey Results. Department officials told us they did not have the resources to follow up with and evaluate compliance at each of the schools that exhibited an elevated risk of inaccurate reporting. Since the new reporting structure takes effect July 1, 2017, the Department should assess known and suspected deficiencies in incident reporting, and use this information to target its oversight to help ensure more accurate and complete DASA incident reporting.

Record Retention

According to Department guidance and its Records Retention and Disposition Schedule ED-1

(Schedule), schools must keep records related to DASA incidents until the youngest person involved in the incident reaches the age of 27 before legally disposing of them. One of the purposes of the Schedule is to ensure that records are retained as long as needed for administrative, legal, and fiscal purposes. However, 19 of the 20 schools we visited either said they have no formal policy for retaining DASA records or indicated that they keep them for less than the age 27 requirement. Most schools were not aware of the requirement. Some schools said they purge incident records after the students involved graduate; officials at one school said that the records move with the student if the student changes schools. When schools do not retain incident records, their ability to identify existing or developing patterns and respond in prompt and meaningful ways is diminished. Further, the failure to retain records for the requisite time frame could have legal ramifications for both schools and districts. We believe the Department should re-emphasize the record retention requirement for DASA incidents with the schools.

Recommendations

1. Develop a risk assessment that incorporates known and suspected weaknesses in DASA implementation, and commit sufficient resources to promote school compliance with DASA requirements, including accurate reporting, under the new structure.
2. Work with partners, such as the Center for School Safety, to enhance training to better meet user needs. Efforts should include (but not be limited to): identifying school and district-level resources to facilitate proper electronic reporting and record keeping; and ensuring that training content includes the details that need to be documented in incident investigation records as well as examples that clearly distinguish reportable from non-reportable incidents.
3. Remind school and district officials of DASA record retention requirements and address areas of confusion that compromise compliance with these requirements.

Audit Scope, Objectives, and Methodology

Our audit determined whether the Department's guidance on DASA, including guidance that specifically addresses transgender and gender nonconforming students, was timely and adequate. We also assessed the steps the Department has taken to ensure that school district policies and practices comply with DASA and that school districts reported material incidents of discrimination and harassment, as required, to the Department. The audit covered the period July 1, 2012 through April 4, 2017.

To accomplish our objectives, we reviewed relevant laws, regulations, and Department guidance. We met with key Department personnel to obtain an understanding of the Department's efforts in promoting DASA implementation and the roles and responsibilities of the parties involved in reporting school incident data. We became familiar with the flow of information between and among these parties. We analyzed school incident data reported on the Department's website to identify possible risk areas and to select a sample of schools to visit. We also assessed the Department's internal controls as they relate to its oversight role in collecting and communicating

reported incident data and in providing relevant guidance to schools and school districts in implementing DASA requirements. We communicated our findings to Department management, and considered information they provided through April 4, 2017.

In selecting schools to visit, we considered risks for underreporting or misreporting as well as opportunities to identify promising practices for incident recording, management, and reporting. We also analyzed VADIR data to provide more information about school reporting and identify potential risk areas.

In total, we selected 20 schools to visit as follows:

- Ten schools with reported enrollment greater than 1,000 students that reported zero DASA incidents for both the 2014-15 and 2013-14 school years;
- Five schools whose total reported DASA incidents for 2014-15 included a high percentage (anywhere from 87 to 100 percent) in the “other” category. Each of these schools also reported at least one incident of cyberbullying; and
- Five schools that reported DASA incidents for 2014-15 in each of the six highest-volume incident categories (excluding “other”): disability, gender, race, sex, sexual orientation, and weight. Three of these schools also reported at least one incident of cyberbullying.

During our site visits we assessed school and district efforts in implementing selected DASA provisions, including touring the school buildings, meeting with school and district personnel, reviewing district policies and record-keeping methods, and reviewing sample incident records.

We conducted our performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

In addition to being the State Auditor, the Comptroller performs certain other constitutionally and statutorily mandated duties as the chief fiscal officer of New York State. These include operating the State’s accounting system; preparing the State’s financial statements; and approving State contracts, refunds, and other payments. In addition, the Comptroller appoints members to certain boards, commissions, and public authorities, some of whom have minority voting rights. These duties may be considered management functions for purposes of evaluating threats to organizational independence under generally accepted government auditing standards. In our opinion, these functions do not affect our ability to conduct independent audits of program performance.

Authority

This audit was performed pursuant to the State Comptroller’s authority as set forth in Article V, Section 1 of the State Constitution and Article II, Section 8 of the State Finance Law.

Reporting Requirements

We provided a draft copy of this report to Department officials for their review and formal comment. We considered their comments in preparing this final report and have included them in their entirety at the end of the report. Department officials agreed with our recommendations and indicated they will take steps to implement them.

Within 90 days after final release of this report, as required by Section 170 of the Executive Law, the Commissioner of the State Education Department shall report to the Governor, the State Comptroller, and the leaders of the Legislature and fiscal committees, advising what steps were taken to implement the recommendations contained herein, and where recommendations were not implemented, the reasons why.

Contributors to This Report

John F. Buyce, CPA, CFE, CIA, CGFM, Audit Director
Steve Goss, CIA, CGFM, Audit Manager
Sharon L. Salembier, CPA, CFE, Audit Supervisor
Wayne Bolton, CPA, Examiner-in-Charge
Chris Herald, CGAP, Examiner-in-Charge
Chelsey Fiorini, Senior Examiner
Cheryl Glenn, Senior Examiner
James Rappaport, Senior Examiner
Joseph Southworth, Senior Examiner
Jarrold Weir, Staff Examiner
Rachael Hurd, Mapping Analyst
Hilary Papineau, Mapping Analyst

Division of State Government Accountability

Andrew A. SanFilippo, Executive Deputy Comptroller
518-474-4593, asanfilippo@osc.state.ny.us

Tina Kim, Deputy Comptroller
518-473-3596, tkim@osc.state.ny.us

Ken Shulman, Assistant Comptroller
518-473-0334, kshulman@osc.state.ny.us

Vision

A team of accountability experts respected for providing information that decision makers value.

Mission

To improve government operations by conducting independent audits, reviews and evaluations of New York State and New York City taxpayer financed programs.

Exhibit A

Dignity for All Students Act - Relevant Terminology

Cyberbullying – harassment or bullying, as defined below, that occurs through any form of electronic communication. (Education Law § 11[8])

Gender – actual or perceived sex and includes a person’s gender identity or expression. (Education Law § 11[6])

Gender identity and expression; gender nonconforming – an individual’s internal sense of being a man, a woman, a boy, a girl, or something outside of these binaries. Since gender identity is internal, it is not necessarily visible to others. Gender identity is not the same as sexual orientation – people of all different orientations can identify and express their gender in many different ways. Students may face harassment or bullying because they express their gender in a way that does not conform to society’s expectations (are gender nonconforming), regardless of their sexual orientation. (Terms partially attributed to other sources and cited in the Department’s Dignity for All Students Act Glossary and Acronym Guide)

Harassment and bullying – creation of a hostile environment by conduct or by threats, intimidation, or abuse, including cyberbullying, that has or would have the effect of unreasonably and substantially interfering with a student’s educational performance, opportunities or benefits, or mental, emotional, or physical well-being; or reasonably causes or would reasonably be expected to cause a student to fear for his or her physical safety; or reasonably causes or would reasonably be expected to cause physical injury or emotional harm to a student; or occurs off school property and creates 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. Acts of harassment and bullying include, but are not limited to, acts based on a person’s actual or perceived race, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender or sex. The term “threats, intimidation or abuse” includes verbal and non-verbal actions. (Education Law § 11[7])

Material incident of harassment, bullying, and/or discrimination – a single verified incident or a series of related verified incidents where a student is subjected to harassment, bullying and/or discrimination by a student and/or employee on school property or at a school function. This includes incidents that occur off school property where they 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, and is the subject of a written or oral complaint to the superintendent, principal, or their designee, or other school employee. (8 NYCRR 100.2[kk][1][ix])

Sexual orientation – actual or perceived heterosexuality, homosexuality, or bisexuality (Education Law § 11[5])

Transgender – an adjective describing a person whose gender identity does not correspond to their assigned sex at birth. (Attributed to other sources and cited in the Department’s Guidance to School Districts for Creating a Safe Supportive School Environment for Transgender and Gender Nonconforming Students)

Exhibit B

Schools Visited That Reported Zero DASA Incidents for 2013-14 and 2014-15

School Name	School District	County	Enrollment Range	No. VADIR 10 Incidents Reported 2014-15	Total Records Reviewed	What We Reviewed
Newburgh Free Academy	Newburgh City	Orange	2,001+	14	25	14 VADIR 10 incidents + 11 other incident referrals
Freeport High School	Freeport Union Free	Nassau	2,001+	29	25	Discipline records
Penfield Senior High School	Penfield Central	Monroe	1,001–2,000	0	25	Behavior Incident records
Ramapo High School	East Ramapo Central	Rockland	1,001–2,000	2	7	2 VADIR 10 incidents + 5 other electronic discipline records or paper reporting forms
Niagara-Wheatfield Senior High School	Niagara-Wheatfield Central	Niagara	1,001–2,000	13	25	13 VADIR 10 incidents + 12 VADIR item 2 incidents
Irondequoit High School	West Irondequoit Central	Monroe	1,001–2,000	10	25	10 VADIR 10 incidents + 15 other VADIR incidents (Disruptive or Minor Incidents)
Lincoln High School	Yonkers City	Westchester	1,001–2,000	6	25	6 VADIR 10 incidents + 19 other electronic incident records
Oswego High School	Oswego City	Oswego	1,001–2,000	0	25	25 DASA or Complaint Reporting Forms
Hommocks	Mamaroneck Union Free	Westchester	1,001–2,000	1	5	5 emails or letters
Saunders Trades & Technical High School	Yonkers City	Westchester	1,001–2,000	11	25	11 VADIR 10 records + 14 other electronic incident records
Totals				86	212	

Note: The VADIR 10 category is for reporting incidents of “Intimidation, Harassment, Menacing, or Bullying Behavior and No Physical Contact.”

Exhibit D-1

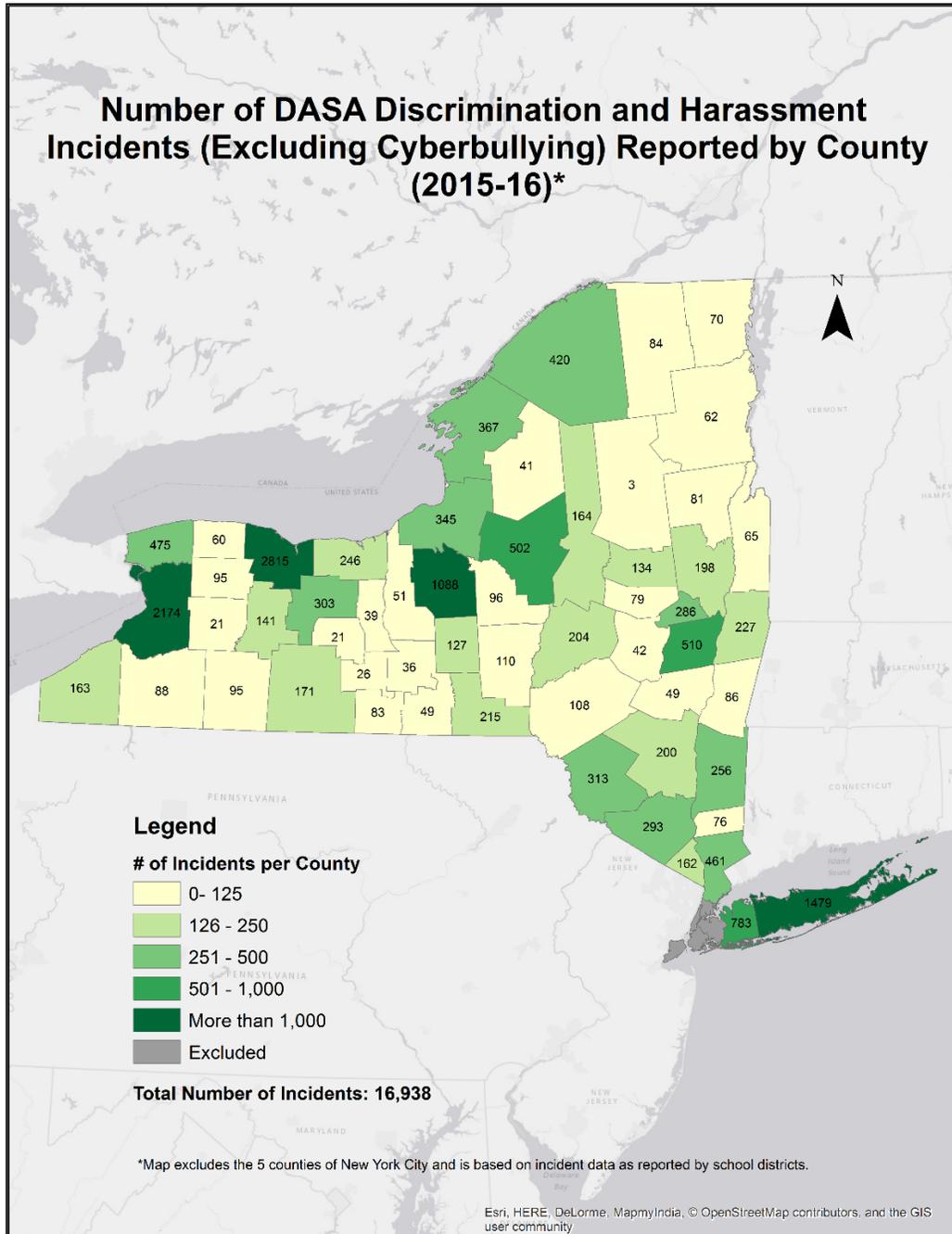


Exhibit D-2

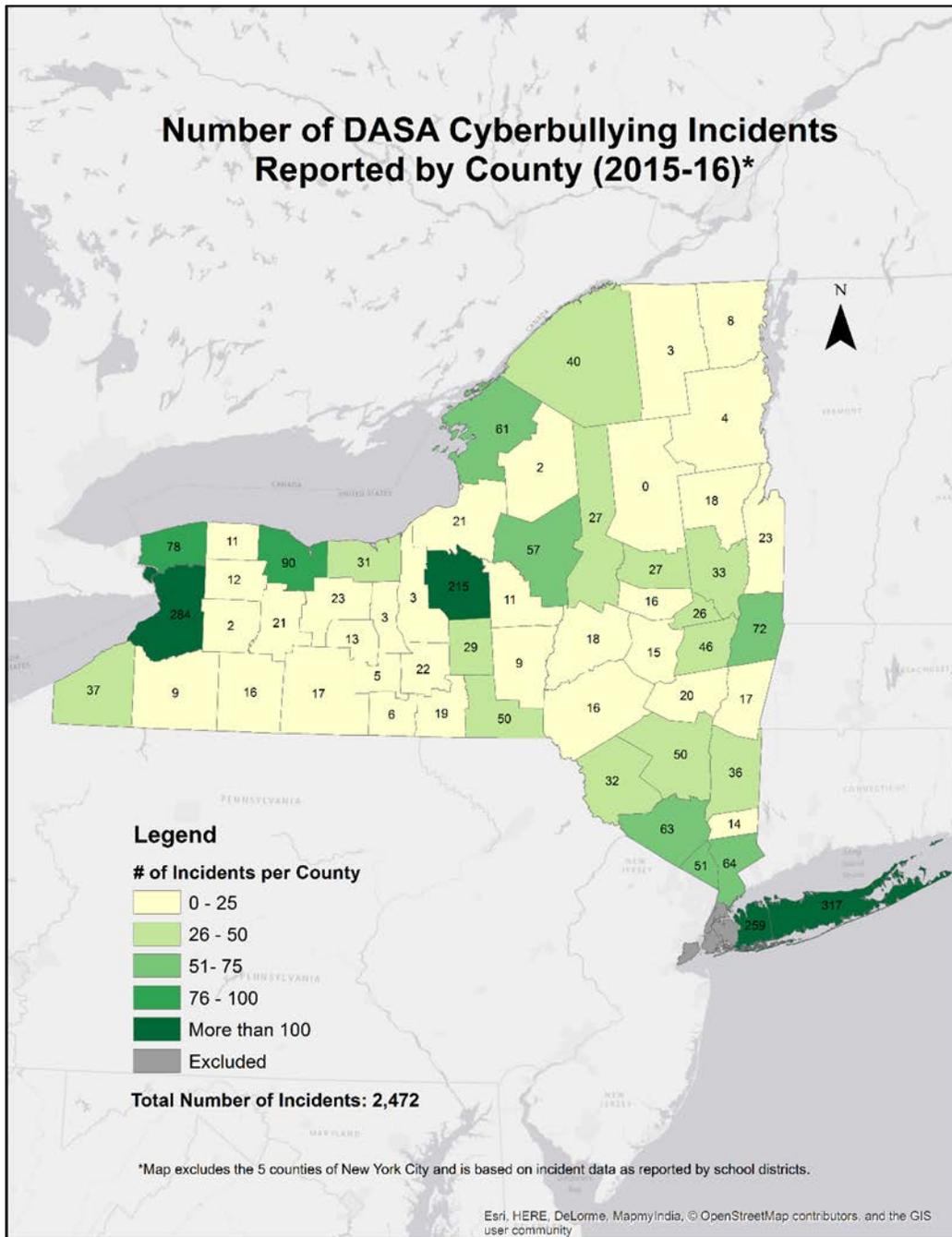


Exhibit E-1

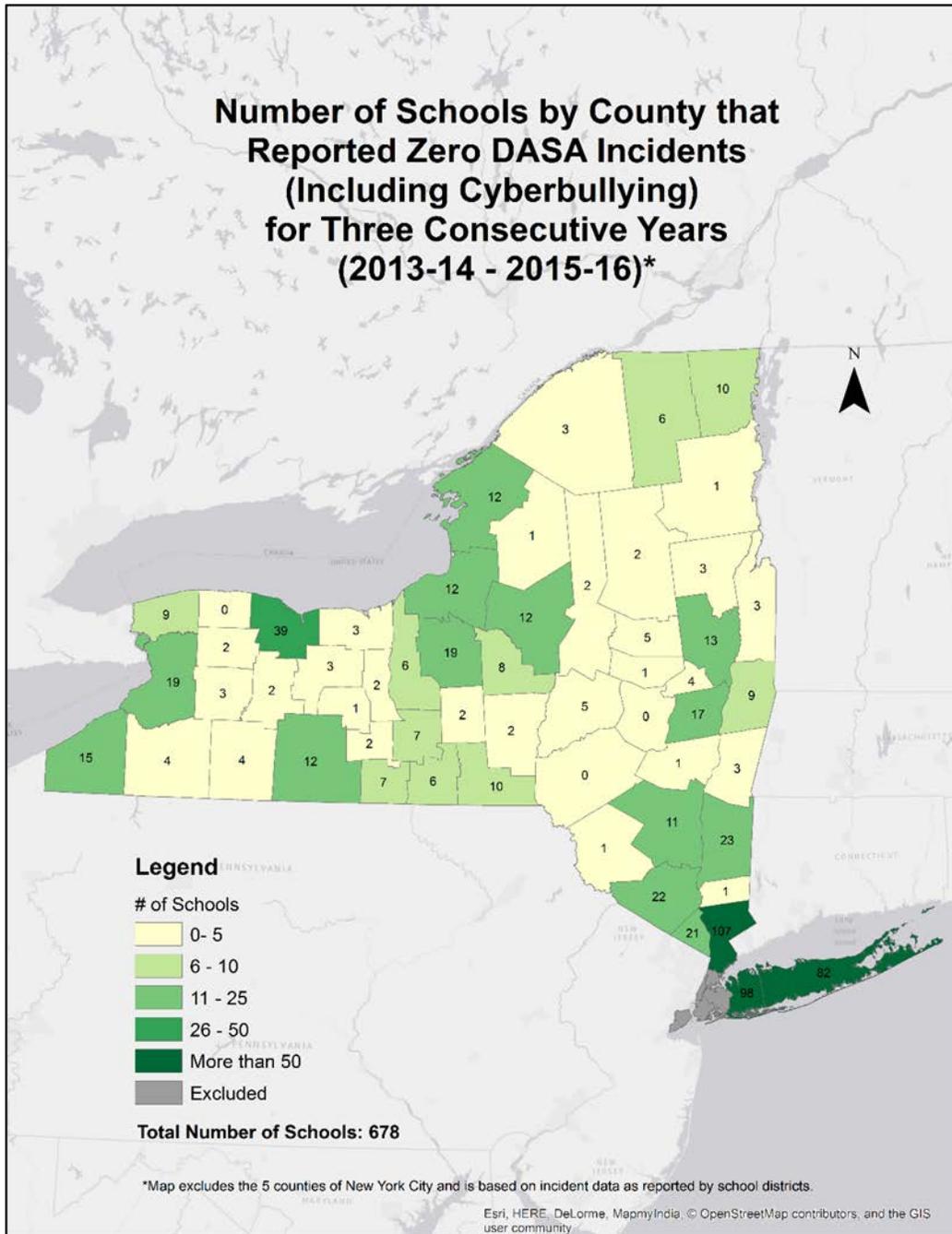
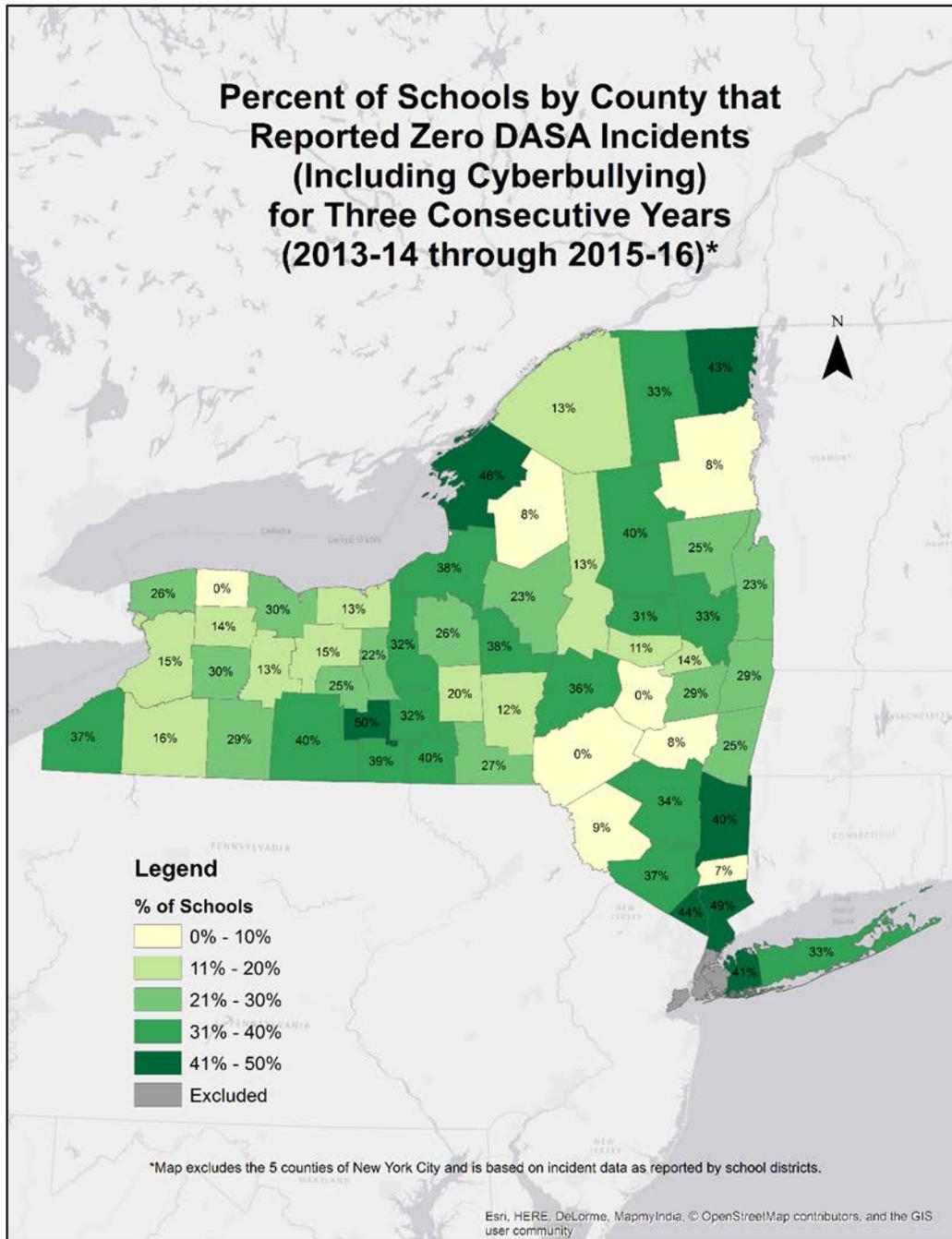


Exhibit E-2



Agency Comments



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

DEPUTY COMMISSIONER
Office of Performance Improvement and Management Services
O: 518.473-4706
F: 518.474-5392

June 14, 2017

John F. Buyce
Audit Director
Office of the State Comptroller
Division of State Government Accountability
110 State Street, 11th floor
Albany, NY 12236

Dear Mr. Buyce:

The following is the New York State Education Department's (Department) response to the draft Office of the State Comptroller (OSC) audit report, 2016-S-28: Implementation of the Dignity for All Students Act.

Recommendation 1: Develop a risk assessment that incorporates known and suspected weaknesses in DASA implementation, and commit sufficient resources to promote school compliance with DASA requirements, including accurate reporting, under the new structure.

Department's Response: The Department agrees with this recommendation and will develop a risk assessment to ensure effective implementation of DASA. As noted by OSC, there is a new reporting structure that will be effective for the 2017 – 18 school year. The Department will work with partners, such as the Center for School Safety, to enhance training to meet the needs of schools and to ensure accurate record keeping and reporting at the school level.

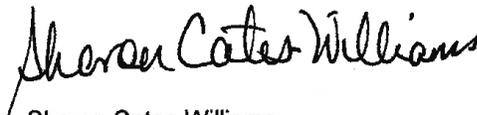
Recommendation 2: Work with partners, such as the Center for School Safety to enhance training to better meet user needs. Efforts should include (but not be limited to): identifying school and district-level resources to facilitate proper electronic reporting and record keeping; and ensuring the training content includes both details that need to be documented in incident investigation records and examples that clearly distinguish reportable from non-reportable incidents.

Department's Response: The Department agrees with this recommendation and will enhance the training to focus on the investigative process and clearly distinguishing reportable from non-reportable incidents. The Department refines the DASA trainings annually, so will work with partners such as the New York State Center for School Safety to make these adjustments and to ensure accurate record keeping at the school level.

Recommendation 3: Remind school and district officials of DASA record retention requirements and address areas of confusion that compromise compliance with these requirements.

Department's Response: The Department agrees with this recommendation to remind school and district officials of DASA record retention requirements. The annual training includes data retention requirements, and the Department has sent reminders to schools and school district officials as recent as this month. We will continue to do so in order to address areas of confusion that were cited in the OSC audit report.

Yours truly,



Sharon Cates-Williams
Deputy Commissioner

cc: Jhone Ebert
Renee Rider