New York State Office of the State Comptroller
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Division of State Government Accountability

Implementation of the Dignity for All Students Act

New York City Department of Education

Report 2017-N-6 March 2019

Executive Summary

Purpose

To determine whether the New York City Department of Education (DOE) is ensuring that Dignity for All Students Act (DASA) incidents are reported properly and investigated timely. Our audit scope covered the period from July 1, 2015 through June 28, 2018. We also analyzed 2014-15 school year data from the State Education Department (SED).

Background

DASA took effect on July 1, 2012 with the goal of providing public elementary and secondary school students in New York State with a safe and supportive environment free from discrimination, intimidation, taunting, harassment, and bullying on school property, on school buses, or at school functions. DASA expanded the concepts of tolerance, respect for others, and dignity to include an awareness and sensitivity in the relations of people, including different races, weights, national origins, ethnic groups, religions, religious practices, mental or physical abilities, sexual orientations, gender identities, and sexes.

According to A-832 of DOE's Regulations of the Chancellor (Chancellor's Regulations), complaints of student-to-student discrimination, harassment, intimidation, and/or bullying must be entered into DOE's Online Occurrence Reporting System (OORS) within 24 hours of the school principal or designee becoming aware of the incident. OORS is the system of record for all incidents in schools (e.g., disciplinary, building conditions, accidents) involving all parties within a school community (i.e., students, staff, parents). The school principal or designee is required to identify the appropriate infraction code from the DOE Discipline Code when entering an incident in OORS. Incidents determined to be material by DOE's Office of Safety and Youth Development (OSYD) are submitted to SED annually in 12 bias categories, including an "other" category for incidents not covered by the other 11 categories. Section 100.2 of the Regulations of the Commissioner of Education (Commissioner's Regulations) defines 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" (New York Codes, Rules and Regulations [NYCRR§100.2]).

Key Findings

We found that DOE could do more to fully comply with DASA. For example:

- DOE does not proactively identify schools that may be at risk for underreporting and/or improperly reporting incidents. While making improvements related to OSYD's process to categorize reported incidents, it relies on schools to comply with reporting requirements and report incidents accurately. However, the data reviewed suggests ongoing problems with the completeness and accuracy of reported data.
- DOE is required to annually report material incidents of harassment, bullying, and discrimination to SED. For school years 2015-16 and 2016-17, DOE did not identify and report any material incidents to SED for 670 schools and 570 schools, respectively. Moreover, DOE did not report any material incidents for 387 of those schools in both school years. Additionally, while there

has been a slight decrease in the percentage of incidents reported as "other" from the 2015-16 and 2016-17 school years (from 58 percent to 56 percent), the percentage of incidents reported as "other" was still significantly higher than the 22 percent reported by schools in New York City for the 2013-14 school year.

- School survey data also is not consistent with the data reported to SED. For instance, Hillcrest High School, with 3,354 students, did not report any material incidents to SED for the three school years ended June 30, 2017. However, when students were asked on the 2016-17 school year survey how often they were harassed, bullied, or intimidated by other students, 18 percent reported most or some of the time.
- When we visited a sample of 25 schools, we found that incidents were not being entered consistently because school staff had differing views of when to report an incident. Moreover, while the Chancellor's Regulations state that complaints of discrimination, harassment, intimidation, and/or bullying must be entered into OORS, school personnel's understanding of when a complaint should be entered differed from the regulation requirement. For instance, one assistant principal stated that incidents were only entered if a physical fight took place, while another stated that an incident should only be reported if the action was repetitive.
- The Discipline Code's definition of bullying is not aligned with the definition in Section 100.2 of the Commissioner's Regulations, which states that bullying may be either "a single verified incident or a series of related verified incidents." However, the Discipline Code states that bullying is "a pattern of behavior usually repeated over time and can take many forms." This understanding appears to be common in the schools we visited. For instance, the principal at one school defined bullying as a pattern, and stated that something would need to happen three times to constitute a pattern.
- Incidents were also not reported and updated in a timely manner. According to the Chancellor's Regulations, complaints of discrimination, harassment, intimidation, and/or bullying must be entered into OORS within 24 hours of the school principal or a designee becoming aware of the incident. DOE requires schools to update DASA-related incidents in OORS within ten days. However, we found that 140 (19 percent) of the 752 reported incidents over the three-year period examined were not submitted timely. Additionally, 12 of the 752 reported incidents were never updated in OORS, and 363 of the remaining 740 (49 percent) were not updated timely. While DOE made significant progress in improving the timeliness of updating incidents, we still found instances of significant delays.
- While OSYD officials informed us that all OORS incidents for 2017-18 and beyond, regardless of code, are reviewed for potential DASA-related material incidents, the majority of their determinations are performed in the summer and finalized in the fall. This deprives DOE management of important information that could be used to manage its schools and New York City parents of a critical piece of information when deciding where to send their children to school.

Key Recommendations

- Institute proactive measures to identify schools at risk of underreporting bullying incidents and/or incorrectly categorizing incidents as "other" and take corrective actions. Such measures could include analyzing incident data, considering student population as well as school survey results.
- Periodically share information on material incidents with the public to provide a more current

picture of the school environment.
- Align the Discipline Code definition of bullying with the NYCRR§100.2 definition.

Other Related Audit/Report of Interest

State Education Department: Implementation of the Dignity for All Students Act (2016-S-28)

State of New York
Office of the State Comptroller

Division of State Government Accountability

March 13, 2019

Mr. Richard Carranza
Chancellor
New York City Department of Education
52 Chambers Street
New York, NY 10007

Dear Mr. Carranza:

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 so doing, 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 III of the General Municipal 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

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Background

All children should be able to attend school in a safe, welcoming, and caring environment. New York State's Dignity for All Students Act (DASA) was signed into law on September 13, 2010 and took effect on July 1, 2012. Its goal is to provide public elementary and secondary school students with a safe and supportive environment free from discrimination, intimidation, taunting, harassment, and bullying on school property, on school buses, or at school functions. DASA expanded the concepts of tolerance, respect for others, and dignity to include an awareness and sensitivity in the relations of people, including different races, weights, national origins, ethnic groups, religions, religious practices, mental or physical abilities, sexual orientations, gender identities, and sexes.

The New York City (NYC) Department of Education (DOE) is the largest school system in the United States, serving 1.1 million students in approximately 1,800 schools (1,600 DOE-operated and 200 charter schools). DOE's Online Occurrence Reporting System (OORS) is the primary system of record for all incidents (e.g., disciplinary, building conditions, accidents) in DOE-operated schools that involve the school community (i.e., students, staff, and parents). According to A-832 of DOE's Regulations of the Chancellor (Chancellor's Regulations), complaints of student-to-student discrimination, harassment, intimidation, and/or bullying must be entered into OORS within 24 hours of a school principal or designee becoming aware of the incident. The school principal or designee is required to identify the appropriate infraction code from DOE's Discipline Code when entering an incident in OORS – there are 166 infraction codes, of which 122 are behavioral codes and the remaining are safety-related. OORS limits schools to one infraction code per incident.

School officials must also consult the DOE Discipline Code when determining which disciplinary actions to impose. Infractions are grouped into five levels based on severity. Each level provides possible supports and interventions as well as a minimum-to-maximum range of possible disciplinary responses that may be imposed by a teacher, a principal, the Chief Executive Officer of DOE's Office of Safety and Youth Development (OSYD), or other designee of the Chancellor or Community Superintendent. According to the Discipline Code, the response to misconduct should begin with the lowest level of disciplinary response when possible and should include appropriate supports and interventions. More severe accountability measures could be imposed on students with patterns of persistent misconduct. All potential DASA-related incidents must be investigated within five days of receipt of the complaint, and the school must advise the parents of both the alleged victim and the accused whether the allegation has been substantiated. When updating a DASA-related incident in OORS, a school is prompted to indicate whether, after further investigation, the incident is a violation of the Chancellor's Regulations.

Section 100.2 of the Regulations of the Commissioner of Education (Commissioner's Regulations) defines a material incident, in part, 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" (New York Codes, Rules and Regulations [NYCRR§100.2]). According to the Chancellor's Regulations, an incident is deemed material if, following an investigation by the school, it is determined that the student's actions

created a hostile school environment for another student. Prior to the 2017-18 school year, incidents that fell under the 18 DASA-related infraction codes, as determined by OSYD (see Exhibit A), were the only ones reviewed for materiality. Beginning with the 2017-18 school year, OSYD's School Safety and Educational Climate Team (SSEC) is responsible for reviewing all OORS incidents for potential material DASA incidents. DOE is required to annually report material incidents of harassment, bullying, and discrimination to the State Education Department (SED) (see Exhibit B). Twelve bias categories are used for reporting material incidents to SED, including an "other" category for incidents not covered by the other 11 categories (see Exhibit C). For school years 2015-16 and 2016-17, DOE reported 4,065 and 4,541 cases, respectively, of material incidents to SED (see Table 1).

Table 1

School Year	Number of Schools*	Report Type	Number of "Other" Incidents	Total Material Incidents
2015-16	1,540	In-Person	1,748	3,268
		Cyberbullying**	611	797
		Year Total* **	**2,359**	**4,065**
2016-17	1,527	In-Person	1,882	3,640
		Cyberbullying**	659	901
		Year Total* **	**2,541**	**4,541**

* We did not include NYC charter schools or District 75 schools in our data.

**Cyberbullying is defined as harassment or bullying that occurs through any form of electronic communication such as texting or social media (e.g., Snapchat).

*** SED incidents may be duplicative if an incident includes multiple biases.

DOE's Borough Field Support Centers (Field Support) were created in the 2015-16 school year to provide support, including professional development, to DOE schools. The Student Services office, within Field Support, includes Climate Managers, who receive their training, data, and technical support from OSYD and are responsible for addressing DASA-related issues. Climate Managers provide personalized responses based on OSYD monthly reports, which include data on infractions, attendance, and safety reports from superintendents.

Audit Findings and Recommendations

DOE needs to do more to ensure full compliance with DASA. Our review found DOE does not make sufficient efforts to identify and provide proper guidance to schools that are potentially underreporting or incorrectly categorizing incidents as "other." Moreover, based on our visits to 25 sampled schools, we found that incidents are not entered consistently due to school personnel's differing views on when to report an incident. This is possibly due to the differing definitions of bullying in DOE's Discipline Code and NYCRR§100.2. We also found weaknesses in training for school officials responsible for entering incidents into OORS as well as issues with the timeliness of reporting and updating incidents.

DOE Oversight of Reporting

DOE is required to annually report material incidents of harassment, bullying, and discrimination to SED. For school years 2015-16 and 2016-17, DOE did not report any material incidents to SED for 670 schools and 570 schools, respectively. Moreover, DOE did not report any material incidents for 387 of those schools in both school years. In school year 2015-16, DOE reported 237 schools with just one material incident to SED. Similarly, 228 schools with just one material incident were reported in school year 2016-17 (see Exhibit D). An examination of SED's data for the 2014-15 school year shows that 288 schools (237 elementary, 26 middle, and 25 high schools) did not report any material incidents for the three school years ended June 30, 2017.

Among the schools for which no material incidents were reported for the three-year period were those with large student populations, such as Hillcrest High School (3,354 students), P.S. 86 Kingsbridge Heights (1,706 students), Beacon High School (1,292 students), P.S. 235 Janice Marie Knight (1,257 students), and P.S./I.S. 218 Rafael Hernandez Dual Language Magnet School (1,004 students). DOE officials asserted that the absence of reported material incidents could be attributed to bullying being less predominant at the elementary school level. However, this assertion does not account for the non-reporting by middle and high schools. In addition, officials did not provide any information about actions taken or inquiries made to ensure the information submitted by these schools was complete and accurate. We believe it is incumbent upon DOE management to ensure that all incidents occurring at DOE schools are properly recorded and addressed, and that information recorded in OORS and reported to SED is complete and accurate.

In September 2014, the Office of the New York State Attorney General (AG) and SED conducted a survey of public elementary and secondary schools to determine if the schools were complying with their obligations under DASA. The report, issued in August 2016, observed that 98 percent, or 1,762, of the 1,792 NYC public and charter schools surveyed reported ten or fewer incidents of harassment, bullying, or discrimination for the 2013-14 school year, and that 70 percent, or 1,257, of the 1,792 schools reported no incidents. While there has been a slight decrease in the percentage of incidents reported as "other" from the 2015-16 and 2016-17 school years, from 58 percent to 56 percent (see Exhibit C), the percentage is significantly higher than the 22 percent reported by NYC schools for the 2013-14 school year.

The report concluded that "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." As shown in Table 1, a large number of incidents are still being reported as "other" to SED. Similarly, many schools are reporting zero material incidents (see Tables 2 and 3), and a large number are reporting only one incident (see Exhibit D). While the number of schools reporting no material incidents has decreased, a large number of middle schools (20 percent) and high schools (17 percent) continued to report no incidents in 2016-17. We believe that this is indicative of a continued risk of significant underreporting of material incidents.

Table 2 – Schools Reporting Zero Material Incidents in 2015-16 School Year

Grade Level	500 or Fewer Students	501-1,000 Students	1,001 or More Students	Total	Number of School Type	Percent Reporting Zero
Elementary	204	208	49	**461**	792	58%
Middle	66	9	2	**77**	270	29%
High Schools*	91	29	12	**132**	478	28%
Totals	**361**	**246**	**63**	**670**	**1,540**	**44%**

*Includes K-12 and 6-12 schools.

Table 3 – Schools Reporting Zero Material Incidents in 2016-17 School Year

Grade Level	500 or Fewer Students	501-1,000 Students	1,001 or More Students	Total	Number of School Type	Percent Reporting Zero
Elementary	208	198	32	**438**	791	55%
Middle	48	2	2	**52**	262	20%
High Schools*	63	11	6	**80**	474	17%
Totals	**319**	**211**	**40**	**570**	**1,527**	**37%**

*Includes K-12 and 6-12 schools.

The AG-SED report recommended improved DASA training for district personnel. When we asked OSYD officials what they have done in response to this recommendation, they stated that anti-bias/bullying web-based training is offered to all DOE staff. While the training is not mandatory, it provides Continuing Teacher and Leader Education credits that count toward a teacher's license. OSYD officials added that a mandatory two-day Respect for All (RFA) training is provided to individuals designated as RFA liaisons at the schools. This training covers the history, purpose, and significance of DASA; illustrates the definitions of harassment, bullying, and discrimination in action; and demonstrates how school employees can identify such behaviors. This training is a one-time requirement, with optional refreshers. OSYD officials said that RFA liaisons are then responsible for providing training to their school's staff. However, some of the RFA liaisons we spoke to do not recall when or if they received this training. Based on our discussions with RFA liaisons and the results of our site visits, we believe that it would be beneficial to require refresher training to remind staff of the DASA requirements and to share any changes or updates to the reporting process, as there still appears to be confusion regarding which incidents need to be reported and how bullying is defined under the law.

School Visit Observations

We selected a judgmental sample of 25 schools for review, including different grade levels at selected schools in all five boroughs (see Table 4). We interviewed staff at the schools to determine how they handled DASA-related incidents and why they were underreported.

Pursuant to the Chancellor's Regulations, "complaints of discrimination, harassment, intimidation, and/or bullying must be entered into OORS." However, we found that staff at some of the sampled schools did not enter every incident into OORS. For example:

- A guidance counselor at Richard R. Green High School of Teaching told us he would not initially involve the school's dean, who is responsible for ensuring the incident is entered in OORS, but instead would "give the aggressor a chance to come clean." He added that the issue would be escalated only if the student's actions continued.
- An assistant principal at James Madison High School stated that minor altercations and infractions are not entered in OORS if no physical contact took place.
- A guidance counselor at Hillcrest High School – a school that reported no material incidents for 2015-16 and 2016-17 – stated that she would not report the incident if the bullying is minor and she can effectively resolve the issue.
- The principal at Lyons Community School stated, "We don't put everything in" as "it's onerous to put everything in when they have Jump Rope." (Jump Rope is a system used by teachers for note-taking for a variety of purposes, including attendance, grades, and student behavior.) DOE subsequently told us that OORS is the primary system for entering incidents. Moreover, an incident recorded in Jump Rope would not be reviewed by OSYD to determine whether it should be reported to SED. Additionally, the RFA liaison at Lyons told us, "The teacher will copy her on the incident and she will decide if it is severe enough to go into OORS."
- A dean at Thurgood Marshall Academy for Learning stated that he enters all bullying incidents in OORS. However, he added that "little arguments are not a crime" and he does not enter something if he can "'nip it' prior to something happening." When we queried him about an incident involving one student striking another in the face that was listed as a minor altercation (instead of as a more serious, physically aggressive behavior reported to SED), the dean stated that "they kept the level down to protect the students, as they would be going to college."

Staff at some of the 25 schools opined that bullying had to be a repeated or patterned behavior. Their opinion is consistent with the Discipline Code, which states that bullying is "a pattern of behavior usually repeated over time and can take many forms." Staff responsible for entering these incidents in OORS consistently referenced the Discipline Code as their guide for incident code selection and disciplinary action. However, this definition does not totally align with Section 100.2 of the Commissioner's Regulations, which states that bullying may be "a single verified incident or a series of related verified incidents." DOE officials told us they do not believe the Discipline Code is in conflict with NYCRR§100.2. However, we found during our visits to the schools that the Discipline Code's definition of bullying had, in fact, affected incident reporting. For example:

- A guidance counselor at I.S. 49 Berta A. Dreyfus stated that, for an incident to be bullying, it has to be persistent or patterned. When asked if incidents that do not meet this definition of bullying would be written up, she stated that she would be writing things up all day if everything was captured.
- An assistant principal at P.S. 86 Kingsbridge Heights – a school that had no reported material incidents for the 2015-16 and 2016-17 school years – stated that cyberbullying may not be entered the first time it occurred, depending on what was said, the level of severity, and if it was persistent.
- The principal at P.S. 46 Arthur Tappan stated that bullying is a pattern and that something would need to happen three times to constitute a pattern.
- An assistant principal at P.S. 44 Thomas C. Brown stated that if the conflict was a misunderstanding, it may not be documented in OORS. However, if the behavior was repeated and abusive, it would be reported. When asked how he would know whether the behavior was repeated if it was not documented, he replied that it would be difficult.

Seven of the 25 schools in the 2015-16 school year and 8 of the 25 schools in the 2016-17 school year had no material incidents reported to SED (see Table 4), despite enrollments ranging from 558 to 3,895 students. In addition, Hillcrest – a school with no reported incidents in both school years – also had no material incidents reported to SED for the 2014-15 school year.

Table 4

Sample	Borough	School Name		2016		2017	
			School Enrollment	Reported in OORS	SED Material Incidents	Reported in OORS	SED Material Incidents
1	Bronx	Angelo Patri Middle School (The)	**525**	11	8	8	3
2	Queens	August Martin High School	**360**	25	4	*	4
3	Manhattan	Community Health Academy of the Heights	**659**	24	25	12	12
4	Queens	Forest Hills High School	**3,895**	8	3	12	0
5	Brooklyn	Franklin Delano Roosevelt High School	**3,182**	28	0	30	11
6	Bronx	Herbert H. Lehman High School	**784**	71	3	27	7
7	Manhattan	High School for Health Professions & Human Services	**1,689**	9	0	11	1
8	Queens	Hillcrest High School	**3,354**	*	0	0	0
9	Staten Island	I.S. 49 Berta A. Dreyfus	**760**	10	5	26	13
10	Queens	I.S. 93 Ridgewood	**1,113**	11	3	9	0
11	Brooklyn	James Madison High School	**3,390**	*	1	*	0
12	Manhattan	J.H.S. 167 Robert F. Wagner	**1,351**	8	5	11	9
13	Queens	J.H.S. 74 Nathaniel Hawthorne	**1,125**	*	2	0	0
14	Brooklyn	Lyons Community School	**512**	13	12	23	16
15	Brooklyn	M.S. 113 Ronald Edmonds Learning Center	**323**	23	24	*	1
16	Brooklyn	P.S. 109	**675**	16	11	7	4
17	Queens	P.S. 20 John Bowne	**1,366**	*	0	13	5
18	Staten Island	P.S. 42 Eltingville	**1,017**	6	1	*	1
19	Staten Island	P.S. 44 Thomas C. Brown	**903**	*	0	*	1
20	Manhattan	P.S. 46 Arthur Tappan	**681**	15	13	14	3
21	Bronx	P.S. 53 Basheer Quisim	**1,164**	*	0	*	0
22	Bronx	P.S. 86 Kingsbridge Heights	**1,706**	0	0	*	0
23	Manhattan	Richard R. Green High School of Teaching	**532**	45	21	32	21
24	Bronx	Schuylerville Preparatory High School	**349**	6	5	13	10
25	Manhattan	Thurgood Marshall Academy for Learning	**558**	11	8	*	0
			Totals	**359****	**154**	**268****	**122**

* Values from one to five redacted.

** Redacted amounts included in totals.

School Surveys

Each year, DOE offers parents, teachers, and students in grades 6 through 12 an opportunity to respond to a school survey designed to collect important information about a school's ability to support the success of its students. One of the questions on the survey asks how often students harass, bully, or intimidate other students at their school. As shown in the following, the students' responses to the survey for our sampled schools indicate that bullying experiences are more prevalent than reported and do not reflect information recorded in OORS and reported to SED.

- **Hillcrest High School (3,354 students).** For the 2015-16 school year, 2 percent of the students responded "All the time"; 5 percent responded "Most of the time"; and 30 percent responded "Some of the time." For the 2016-17 school year, 6 percent of the students responded "Most of the time"; 12 percent responded "Some of the time"; and 21 percent responded "Rarely." Hillcrest had no material incidents reported for the three years ending 2016-17.
- **Forest Hills High School (3,895 students).** For the 2016-17 school year, 45 percent of the students responded "Some of the time" or "Most of the time." However, school staff recorded only 12 DASA-related incidents in OORS, and no material incidents were reported to SED.
- **I.S. 93 Ridgewood (1,113 students).** For the 2016-17 school year, 53 percent of the students responded "Some of the time" or "Most of the time." However, just nine DASA-related incidents were recorded in OORS, and no material incidents were reported to SED.
- **M.S. 113 Ronald Edmonds Learning Center (323 students).** For the 2016-17 school year, 21 percent of the students responded "Most of the time." However, school officials recorded five or fewer DASA-related incidents in OORS and reported just one material incident to SED.

DOE officials asserted that, while school survey data is helpful in terms of providing insight, it will never match what school staff record in OORS or report to SED.

Review of School OORS Incidents

For school years 2015-16 and 2016-17, we reviewed OORS data that was reported under 100 infraction codes (18 infraction codes DOE considers as DASA-related and 82 codes we determined may be DASA-related based on the infraction code description). We found that the 25 schools entered 359 and 268 incidents, respectively, under the 18 DASA-related infraction codes. OSYD determined and reported to SED that 154 and 122, respectively, of those incidents were material (incidents may be duplicative if they include multiple biases). See Table 4 earlier in this report.

Three infraction codes (Minor Altercations, Altercations and/or Physically Aggressive Behavior, and Coercion/Threats) for grades K-5 and the three similar codes for grades 6-12 were not reviewed by OSYD as potentially DASA-related during school years 2015-16 and 2016-17. We note that the incidents under these infraction codes may contain elements of bullying, harassment, or intimidation according to the Chancellor's Regulations, which state that discrimination, harassment, intimidation, and/or bullying behavior can include physical violence, stalking, threats,

taunts, teasing, and aggressive or menacing gestures. Additionally, the Discipline Code defines Coercion/Threats (Code A34/B37) as engaging in an act of coercion or threatening or instigating violence, injury, or harm to another or others. We analyzed the data and found 1,521 incidents in 2015-16 and 1,931 in 2016-17 reported in these categories that could potentially be the result of bullying or harassment (see Exhibits E-1 and E-2).

We reviewed OORS data for 11 of the 25 schools that had more than 1,000 students each and reported zero or one material incident during school year 2015-16 or 2016-17, but had reported 164 incidents under the 18 DASA-related codes. We also reviewed the incidents under all 82 codes not considered DASA-related and identified another 385 incidents in OORS that could potentially be DASA-related based on the descriptions entered by the schools. From the 385 incidents, we judgmentally selected 22 (2 from each of the 11 schools) that appeared to be bullying or harassment, and requested any documentation (e.g., from students or witnesses) related to these incidents that may provide further insight. The following are examples of incidents that OSYD did not review:

- Student A and his father reported that the student was being threatened and harassed by student B via social media. Student A subsequently restricted his account to prevent further contact with the other student. School records show that, thereafter, student B admitted texting others, asking them to relay a threatening message to student A. The school reported this incident under the code for Coercion/Threats.
- Student C alleged that student D approached him in the staircase, threatened him, and grabbed his sweatshirt. Student C stated that he felt unsafe and requested a safety transfer. The school reported this incident as a Minor Altercation.

We are not questioning the infraction codes used by the schools but rather OSYD's practice of not reviewing incidents reported outside of its 18 DASA-designated codes. This practice likely contributed to underreporting of DASA-related incidents in school years 2015-16 and 2016-17.

We note that, as of the 2017-18 school year, OSYD's SSEC team reviews all OORS incidents and forwards potential DASA-related incidents, regardless of code, to OSYD for determination of materiality. While OSYD officials informed us that all OORS incidents for 2017-18 and beyond, regardless of code, are reviewed for potential DASA-related material incidents, we were unable to determine how this will affect the number of incidents reported to SED since OSYD stated that the majority of its review is performed in the summer and finalized in the fall. We requested interim information on the number of incidents that had been reported during the 2017-18 school year on multiple occasions, including at our closing conference on August 28, 2018, to gauge whether the new procedures had an impact on the number of incidents classified as DASA. However, DOE neither provided such data nor claimed that such information was readily available and being utilized by its management. Therefore, we are unable to determine if the new process has improved the reporting of material incidents to SED and accurately depicts the climate at the schools.

In addition, we found that schools were not always reporting incidents clearly and consistently, as discussed earlier in this report. For example, one description reads "student E and student F

were involved in a fight." This incident was reported as a Minor Altercation. However, without detailed information, it is difficult for reviewers to determine the nature of this and other such incidents. Because implementation of the new reporting system requires OSYD to review all incidents regardless of infraction codes, the incident description is essential for reviewers to determine whether the incident is DASA-related. OSYD has a responsibility to ensure that schools give complete descriptions to capture all DASA-related incidents. We also found that some of the staff responsible for entering incidents into OORS did not recall receiving formal training on how to enter incidents. Some stated they were taught by someone at the school who was familiar with the system, while others said it was "sink or swim." While use of a specific infraction code can be subjective, staff entering an incident should be aware of what is required when entering the incident to ensure consistency among schools. Lack of formal training may explain why incidents are entered inconsistently among schools, including incidents being miscoded and described vaguely or not being entered at all.

OSYD uses the data in OORS to create monthly reports of all incidents (DASA and non-DASA). The monthly reports are provided to Borough Safety Directors and Student Services Field Support Directors. During our site visit, two Borough Safety Directors and a Climate Manager told us they use the monthly reports to help them determine what support is needed and where, especially when safety issues are involved. However, the majority of DOE's reviews to determine which incidents were material are conducted during the summer, and final numbers are not available until the fall. If the schools are either not reporting or not properly reporting incidents during the school year, the schools, Borough Safety Directors, Student Services Field Support Directors, and other DOE officials cannot identify risks or provide appropriate support during the school year. We believe it is important for DOE to verify the OORS information – including making timely determinations of which incidents must be reported to SED under DASA – throughout the school year so that DOE and the schools can take action sooner. These actions should reduce the number of material incidents as well as allow DOE to identify schools that are failing to report all incidents in OORS. Providing the information sooner would also assist parents as they decide where to send their children to school before the school year begins.

Timeliness of Recording Incidents

According to the Chancellor's Regulations, complaints of discrimination, harassment, intimidation, and/or bullying must be entered into OORS within 24 hours of the school principal or a designee becoming aware of the incident (see Exhibit B). We analyzed the incidents reported under the 18 infraction codes deemed DASA-related for school years 2015-16, 2016-17, and 2017-18 (through 12/31/17) for the 25 sampled schools to determine if they were submitted within the 24-hour time frame. We found that 140 (19 percent) of the 752 reported incidents were not submitted timely (see Table 5).

Table 5

School Year	Incidents Reported Under DOE DASA Codes	Incidents Submitted to OORS Over 24 Hours	Percent of Incidents Not Reported Timely
2015-16	359	62	17%
2016-17	268	57	21%
2017-18*	125	21	17%
Totals	**752**	**140**	**19%**

*Through 12/31/17.

During the 2016-17 school year, one incident at Angelo Patri Middle School was entered into OORS 52 days after it was first reported. Further, in school year 2017-18, one incident at P.S. 46 Arthur Tappan took 56 days before it was entered into OORS.

All potential DASA incident codes must be investigated within five days after receipt of the complaint (see Exhibit B). The school is then required to advise the parents of the alleged victim and the accused whether the allegation is substantiated. Schools are also required to update potential DASA-related incidents in OORS within ten days. We analyzed the incidents reported under the 18 infraction codes deemed DASA-related for school years 2016-2018 (up to 12/31/17) to determine if they were updated within the ten-day time frame. We found that 12 of the 752 reported incidents were never updated in OORS and 363 of the remaining 740 (49 percent) were not updated timely (see Table 6).

Table 6

School Year	Incidents Reported Under DOE DASA Codes	Incidents Not Updated in OORS	DASA Incidents With Updates	DASA Incidents Not Updated Timely	Percent DASA Incidents Not Updated Timely
2015-16	359	4	355	242	68%
2016-17	268	5	263	110	42%
2017-18*	125	3	122	11	9%
Totals	**752**	**12**	**740**	**363**	**49%**

*Through 12/31/17.

While the data in Table 6 shows significant improvement in updating incidents, we still found instances of significant delays. For example, during the 2016-17 school year, one incident at Schuylerville Preparatory High School was updated after 102 days. In school year 2017-18, one incident at Lyons Community School was updated after 42 days.

During our visits, school staff responsible for entering incidents into OORS informed us that they contact DOE's Emergency Information Center (EIC) if they are unsure about a code or if they need to change a code based on an investigation. Several schools expressed issues with the timeliness of EIC's responses, claiming their telephone calls are sometimes put on hold for hours. Other

schools stated they sometimes leave telephone messages and/or send emails to EIC, which delays entering the incident.

Beginning in 2014, OSYD updated OORS to allow for an email to be sent to a school principal when an incident requires an update. Beginning on the fourth day after the school official is informed of the incident, a daily notification is generated until the report is updated. Also, OSYD generates monthly reports that list material incidents that are awaiting updates. The reports are provided to each borough's Field Support, which follows up directly with schools to ensure they are completing and documenting investigations. However, as demonstrated in this report, this process does not ensure that all incidents are updated timely. Without effective controls to address DASA incidents timely, students could be vulnerable to additional bullying.

Recommendations

1. Institute proactive measures to identify schools at risk of underreporting bullying incidents and/or incorrectly categorizing incidents as "other" and take corrective actions. Such measures could include analyzing incident data, considering student population as well as school survey results.

2. Periodically share information on material incidents with the public to provide a more current picture of the school environment.

3. Align the Discipline Code definition of bullying with the NYCRR§100.2 definition.

4. Require more frequent mandatory RFA training and track whether such training took place.

5. Ensure all school employees responsible for entering incidents into OORS have had appropriate training to adequately and accurately document incidents.

6. Ensure that schools comply with timeliness requirements established by the Chancellor's Regulations.

Audit Scope, Objective, and Methodology

The objective of this audit was to determine whether DOE is ensuring that DASA incidents are reported properly and investigated timely. Our audit scope covered the period from July 1, 2015 through June 28, 2018. We also analyzed 2014-15 school year data from SED.

To achieve this objective, we reviewed relevant laws, regulations, and DOE guidance. We met with key DOE personnel to obtain an understanding of DOE's efforts in promoting DASA implementation and the roles and responsibilities of the parties involved in reporting school incident data. We analyzed school incident data from OORS and SED to identify possible risk areas. We also assessed DOE's internal controls as they relate to DASA data reporting and in providing guidance to schools. We judgmentally selected and visited 25 schools from different grade levels located throughout

the five boroughs based on factors such as the total number of students, the total reported material incidents, and the change in incidents reported from 2015-16 to 2016-17. At these schools, we met with various staff to understand the dynamics of how incidents were handled at their respective schools and determine potential causes for underreporting of DASA incidents. We also reviewed the school surveys for our sampled schools.

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 objective. We believe that the evidence obtained during the audit provides a reasonable basis for our findings and conclusions based on our audit objective.

As is our practice, we notify agency officials at the outset of each audit that we will be requesting a representation letter in which agency management provides assurances, to the best of their knowledge, concerning the relevance, accuracy, and competence of the evidence provided to the auditors during the course of the audit. The representation letter is intended to confirm oral representations made to the auditors and to reduce the likelihood of misunderstandings. Agency officials normally use the representation letter to affirm that, to the best of their knowledge, all relevant financial and programmatic records and related data have been provided to the auditors. They further affirm either that the agency has complied with all laws, rules, and regulations applicable to its operations that would have a significant effect on the operating practices being audited, or that any exceptions have been disclosed to the auditors. However, officials at the New York City Mayor's Office of Operations have informed us that, as a matter of policy, mayoral agency officials will not provide representation letters in connection with our audits. As a result, we lack assurance from DOE officials that all relevant information was provided to us during the audit.

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 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 III of the General Municipal Law.

Reporting Requirements

We provided a draft copy of this report to DOE officials for their review and formal comment. Their comments were considered in preparing this final report and are included at the end of it. In their response, DOE officials generally agreed with our recommendations and described actions taken or planned to improve DASA implementation and reporting. For example, to improve reporting, DOE pointed to the building of a parent reporting tool to increase the ways in which bullying is reported and who can report. DOE also indicated that it is exploring ways to make DASA training more accessible to school staff. However, the response does not address the serious risk of underreporting of DASA incidents identified in this report. Our response to DOE's comments is embedded within its response.

Within 90 days of the final release of this report, we request that the Chancellor of the New York City Department of Education report to the State Comptroller, advising what steps were taken to implement the recommendations contained herein, and if the recommendations were not implemented, the reasons why.

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Vision

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

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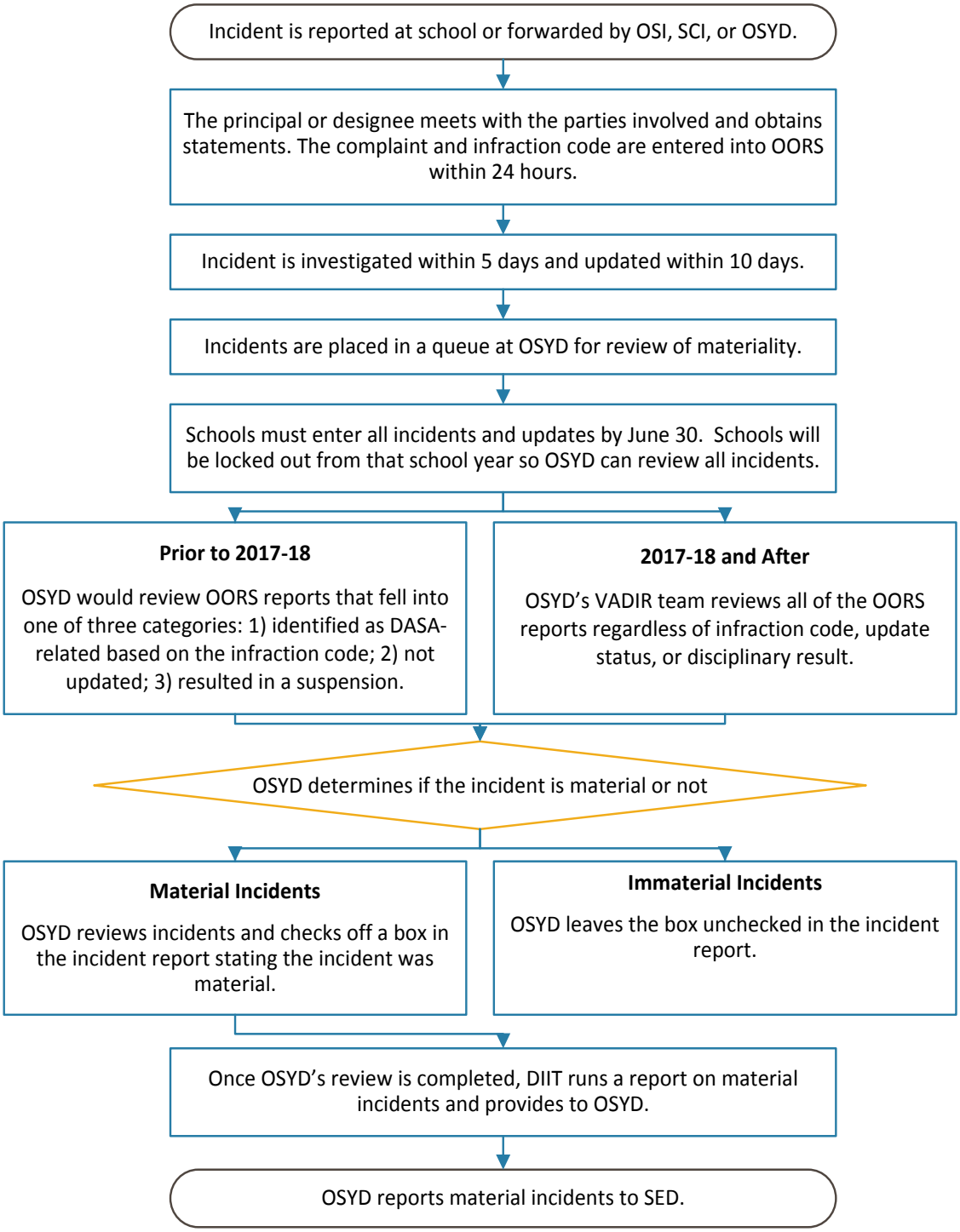
To improve government operations by conducting independent audits, reviews, and evaluations of New York State and New York City taxpayer-financed programs.

Exhibit A

Code	Short Description
A23/B23	Using slurs (bias)
A36/B39	Intimidating and bullying behavior
A37/B40	Intimidating and bullying behavior
A51/B53	Using extreme force against/inflicting to/attempting serious injury upon students or others
A52/B54	Group violence
A53/B55	Threatening or violent behavior, gang-related
A54/B56	Physical sexual aggression
A58/B60	Using weapon (Category I) to attempt injury
A59/B61	Using weapon other than Category I or II to inflict injury upon school personnel, students, others

Exhibit B

Incident Reporting Flowchart



Note: OSI = Office of Special Investigations; SCI = Special Commissioner for Investigations; VADIR = Violent or Disruptive Incident Reporting; DIIT = Division of Instruction and Information Technology.

Exhibit C

School Year	Report Type	Race	Ethnic Group	National Origin	Color	Religion	Religious Practice	Disability	Gender	Sexual Orientation	Sex	Weight	Other	Totals	Percent Other
2015-16	In-Person	278	0	190	0	101	0	60	445	270	0	176	1,748	**3,268**	53%
	Cyberbullying	25	0	24	0	12	0	14	31	46	0	34	611	**797**	77%
	Totals	**303**	**0**	**214**	**0**	**113**	**0**	**74**	**476**	**316**	**0**	**210**	**2,359**	**4,065**	**58%**
2016-17	In-Person	291	0	211	0	131	0	88	545	297	0	195	1,882	**3,640**	52%
	Cyberbullying	33	0	26	0	13	0	22	57	44	0	47	659	**901**	73%
	Totals	**324**	**0**	**237**	**0**	**144**	**0**	**110**	**602**	**341**	**0**	**242**	**2,541**	**4,541**	**56%**

Exhibit D

2015-16 Incidents by Borough

Borough	Schools	Total Incidents	Schools With Zero Incidents	Schools With One Incident	Percent Schools With Zero or One Incidents
Bronx	366	990	140	57	54%
Kings	465	1103	210	71	60%
Manhattan	299	842	128	43	57%
Queens	339	888	164	57	65%
Richmond	71	242	28	9	52%
Totals	**1,540**	**4,065**	**670**	**237**	**59%**

2016-17 Incidents by Borough

Borough	Schools	Total Incidents	Schools With Zero Incidents	Schools With One Incident	Percent Schools With Zero or One Incidents
Bronx	359	1110	126	56	51%
Brooklyn	459	1192	180	81	57%
Manhattan	298	857	112	38	50%
Queens	339	1033	134	43	52%
Richmond	72	349	18	10	39%
Totals	**1,527**	**4,541**	**570**	**228**	**52%**

Exhibit E-1

Incidents Not Identified as DASA Code by School 2015-16			
School	Total Incidents Not Identified as DASA	Total OSYD Identified DASA Incidents	Total SED Material Incidents
Angelo Patri Middle School (The)	88	11	8
August Martin High School	30	25	4
Community Health Academy of the Heights	40	24	25
Forest Hills High School	77	8	3
Franklin Delano Roosevelt High School	112	28	0
Herbert H. Lehman High School	79	71	3
High School for Health Professions & Human Services	38	9	0
Hillcrest High School	10	*	0
I.S. 49 Berta A. Dreyfus	224	10	5
I.S. 93 Ridgewood	76	11	3
James Madison High School	61	*	1
J.H.S. 74 Nathaniel Hawthorne	6	*	2
J.H.S. 167 Robert F. Wagner	25	8	5
Lyons Community School	17	13	12
M.S. 113 Ronald Edmonds Learning Center	20	23	24
P.S. 20 John Bowne	65	*	0
P.S. 42 Eltingville	29	6	1
P.S. 44 Thomas C. Brown	178	*	0
P.S. 46 Arthur Tappan	106	15	13
P.S. 53 Basheer Quisim	11	*	0
P.S. 86 Kingsbridge Heights	25	0	0
P.S. 109	133	16	11
Richard R. Green High School of Teaching	36	45	21
Schuylerville Preparatory High School	14	6	5
Thurgood Marshall Academy for Learning	21	11	8
Totals	**1,521**	**359****	**154**

* Values from one to five redacted.

** Redacted amounts included in totals.

Exhibit E-2

Incidents Not Identified as DASA Code by School 2016-17			
School	Total Incidents Not Identified as DASA	Total OSYD Identified DASA Incidents	Total SED Material Incidents
Angelo Patri Middle School (The)	79	8	3
August Martin High School	28	*	4
Community Health Academy of the Heights	24	12	12
Forest Hills High School	81	12	0
Franklin Delano Roosevelt High School	107	30	11
Herbert H. Lehman High School	41	27	7
High School for Health Professions & Human Services	35	11	1
Hillcrest High School	10	0	0
I.S. 49 Berta A. Dreyfus	216	26	13
I.S. 93 Ridgewood	102	9	0
J.H.S. 74 Nathaniel Hawthorne	8	0	0
J.H.S. 167 Robert F. Wagner	58	11	9
James Madison High School	90	*	0
Lyons Community School	38	23	16
M.S. 113 Ronald Edmonds Learning Center	6	*	1
P.S. 20 John Bowne	208	13	5
P.S. 42 Eltingville	65	*	1
P.S. 44 Thomas C. Brown	329	*	1
P.S. 46 Arthur Tappan	81	14	3
P.S. 53 Basheer Quisim	48	*	0
P.S. 86 Kingsbridge Heights	56	*	0
P.S. 109	111	7	4
Richard R. Green High School of Teaching	35	32	21
Schuylerville Preparatory High School	31	13	10
Thurgood Marshall Academy for Learning	44	*	0
Totals	**1,931**	**268****	**122**

* Values from one to five redacted.

** Redacted amounts included in totals.

Agency Comments and State Comptroller's Comments

Department of
Education
Chancellor Richard A. Carranza

October 10, 2018

Mr. Kenrick Sifontes
Audit Director
Office of the State Comptroller
Division of State Government Accountability
123 William Street, 21st Floor
New York, NY 10038

Re: Response to the Recommendations in the OSC's Draft Audit Report of the Department's "Implementation of the Dignity for All Students Act (DASA) (Report 2017-N-6)"

Dear Mr. Sifontes:

This letter constitutes the formal response of the New York City Department of Education (DOE) to the recommendations made by the Office of the State Comptroller (OSC) in its draft audit report on the DOE's Implementation of the Dignity for All Students Act (Report).

We appreciate the OSC's commitment to elevating the safety of our students. The DOE works hard year-round to ensure that every New York City public school student experiences a safe and supportive school environment free from discrimination, intimidation, taunting, harassment, and bullying. In recent years, the DOE has focused on expanding supports for schools and students to reduce bullying and harassment, including increasing training and messaging to schools around this important issue, and expanding the tools and practices through which incidents are reported, monitored and addressed.

The City is investing $47 million annually to expand effective school climate and mental health programs, and an additional $8 million in new anti-bullying initiatives to better serve students and families, including a reporting portal for families, mental health training, community workshops, and the expansion of student diversity clubs. We have either completed or are on track to complete each item. In May 2018 we hired a Bullying Response Coordinator, responsible for managing the online Bullying Incident Form and 311 complaints. Additionally, earlier this year, we launched Respect for All Conversations, an online training tool now available to all school staff and administrators to develop best practices on maintaining safe and inclusive learning environments. Over 3,000 staff participated in the training, and we are providing targeted training to Parent Coordinators, as well as developing a webinar on recognizing and addressing bullying behavior. We also created a data tracker for school support staff to monitor trends in schools for multiple data points that may impact school climate. While we are proud of our progress to date, we recognize that there is much more work to be done to ensure that all of our students are engaged in learning in a supportive, positive school climate.

To that end, the DOE recently announced the new Division of School Climate and Wellness, which brings together the offices of Equity and Access, Community Schools, Public Schools Athletic League, Safety and Youth Development, School Health, and School Wellness. By unifying these offices, the DOE aims to strategically leverage the work of each office to collectively serve the whole child and create safe, supportive, and culturally responsive environments for all of our students and families.

It is important to note that starting with School Year 2017-18, the DOE's Office of Safety and Youth Development (OSYD) reviews *all* incidents documented in the Online Occurrence Reporting System (OORS) to determine if the allegations are substantiated and the incident is considered material. This review

is completed by our Bullying Response Coordinator, a recently hired staff member whose sole focus is ensuring accurate reporting in OORS and appropriate supports at the school level. Additionally, all material incidents, including those categorized as "other", are shared with the New York State Education Department (State). These changes aligned with the State's merger of the Violent And Disruptive Incident Reporting (VADIR) and DASA incident reporting into a new School Safety and Educational Climate reporting system.

When reviewing incidents for materiality, the DOE must consider several factors, including the incident description, any updates entered by the school, outcome of the investigation, if the incident was bias-based, where the incident occurred, and whether the incident created a hostile environment that "unreasonably and substantially" interfered with a student's academic, emotional, mental, or psychological well-being or makes a student fear for their safety. The Report does not fully articulate the definition of a "material" incident for the public nor does it adequately define the difference between incidents that are to be defined as "bullying" versus incidents that create a hostile environment for another student that "substantially" interferes with a student's physical, social, emotional, mental, or academic well-being.

The OSC refers to the definition of a material incident as outlined in 100.2 of the Regulation of the Commissioner of Education (Commissioner's Regulation): "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", and then attributes the "creat[ion] of a hostile school environment for another student" to the Chancellor's Regulations in an attempt to make the argument that the definitions do not align. However, the definition of a material incident referenced in Chancellor's Regulation A-832, comes directly from the State's definition of a material incident in their Glossary of Terms document.[1] The Commissioner's Regulation 100.2(kk)(1)(viii) also states that not every incident of bullying is material in nature. In order for the incident to be material, the Commissioner's Regulation states that the behavior must create a hostile environment for the target. An additional consideration when determining materiality includes assessing if an incident involves behavior that creates a hostile environment for other students whether in a protected class. The DOE's current robust protocol for reporting and reviewing incidents documented in OORS prior to fulfilling the State's School Safety and Educational Climate reporting requirements mean that it is fully in compliance with the Commissioner's and State's guidance.

The Report takes the position that material incidents reported in the "other" category were "incorrectly" categorized. The argument shared in the Report implies that all bullying is bias-based bullying, which is contrary to the definition of "other" provided by the State. The State's Glossary of Terms defines "other" as material incidents that are aimed at a student's "physical characteristics, age, socio-economic status, health condition, housing, domestic relationships, social/academic status, etc." Additionally, the Commissioner's Regulation requires that non-biased based bullying that is material be classified using the "other" category. The DOE therefore does not agree that the way the "other" category is used is out of compliance with the State and Commissioner's guidance.

State Comptroller's Comment - Our report does not take the position that incidents reported as "other" were incorrectly categorized. Rather, we point out, as did the Attorney General and SED, that the high usage of this category is an indicator of confusion and uncertainty as to how to classify incidents. Our audit recommended that DOE put in place measures to identify schools where there is a risk of underreporting bullying incidents and incorrectly categorizing such as "other."

[1] The DOE would like to share the full definition of a material incident with the public to ensure that readers understand the difference between incidents of bullying and those incidents that rise to the level of materiality, and are therefore required to be submitted to the State (Please see Attachment 1).

The Report also highlights the risk that the DOE potentially underreported DASA material incidents by making the statement that incidents reported as minor altercations (A24/B24), physically aggressive behavior (A33/B36), and coercion/threats (A34/B37) *could* involve bullying. The DOE explained that schools are instructed and trained to document incidents under the highest relevant infraction code. Bullying, harassment, and intimidation infraction codes (A36/A37/B39/B40) are all higher infraction codes than minor altercations, physically aggressive behavior, and coercion/threats infraction codes, and therefore, behavior is encompassed in the DOE's current reporting practices. Additionally, the review by the Bullying Response Coordinator of all incidents documented in OORS for materiality aims to reduce the risk of underreporting.

State Comptroller's Comment - While the schools might have received this instruction from DOE, there were instances, as shown in our report, of potential material bullying that were not categorized in the higher OORS infraction codes.

Following is the DOE's response to OSC's audit recommendations to the DOE:

Recommendations

1. Institute proactive measures to identify schools at risk of underreporting bullying incidents and/or incorrectly categorizing incidents as "other," and take corrective actions. Such measures could include analyzing incident data, considering student population as well as school survey results.

This is current practice. Per Chancellor's Regulation A-832, the DOE trains school staff annually to identify bullying behavior, and all staff are required to report within 24 hours. It is the DOE's current practice to analyze and share incident data on a regular basis with school support staff, and swiftly implement targeted supports where needed, which can include re-training staff.

State Comptroller's Comment - Identifying schools at risk of underreporting bullying incidents and/or incorrectly categorizing incidents as "other" was not the current practice during the period July 1, 2015 through June 28, 2018.

To improve reporting, the DOE has taken steps to increase awareness and means of reporting, including building a parent reporting tool to increase the ways in which bullying gets reported and who can report, and creating a data tracker for school support staff to monitor trends in schools that may impact school climate. Through Respect for All, the DOE remains committed to providing students, families and staff with information on bullying and harassment, and each school has a designated Respect for All liaison. Additionally, posters are present around every school, and schools are required to distribute Respect for All information to students at the start of every school year. This information is translated in all 10 DOE languages. These increased pathways, as well as increased trainings to raise awareness around incidents that relate to DASA, have resulted in increased reporting in general at the DOE, and we will continue to review incident reporting data alongside student perception data to identify discrepancies and ensure schools receive appropriate supports and training.

The DOE does not agree that incidents are incorrectly categorized as "other" and feels that the audit team may have incorrectly assumed that bullying is always bias-based.

State Comptroller's Comment - We did not incorrectly assume that bullying is always bias-based, nor did we say that incidents are incorrectly categorized as "other." Rather, we stated that there is a risk of significant underreporting of material incidents.

Examples of non-bias-based bullying include targeting a student for socio-economic reasons, such as housing, food, or clothing insecurity. State guidance is clear that not every incident of bullying is found to be material in nature, as defined by Commissioner's Regulation l00.2(kk)(1)(viii), which states that the behavior must create a hostile environment for the target. Additionally, the Commissioner's Regulation

requires that non-bias-based bullying that is material be classified using the "other" category. All material incidents are reported to the State, whether bias-based or not. The DOE therefore does not agree that the way the "other" category is used is out of compliance with the State and Commissioner's guidance.

2. Maintain and utilize real-time data on material incidents to identify schools that may require DOE intervention. Such information should be shared periodically with the public to provide a more current picture of school environment.

This is current practice. OSYD staff review OORS reports of material incidents daily, on an ongoing basis. The DOE shares the number of complaints and substantiated material incidents as documented in OORS with staff at each Field Support Center, including Directors of Student Services, Crisis Managers, Climate Managers, and other school support staff as needed, at least monthly. This information is used for targeted outreach and training to schools. In addition, the DOE is now reporting complaints of bullying and substantiated material incidents to the City Council biannually in May and November, which is published on the DOE's website for public review.

State Comptroller's Comment - The statement "Maintain and utilize real time data on material incidents to identify schools that may require DOE intervention" has been deleted from the recommendation. Moreover, we applaud DOE for now biannually reporting certain complaints and material incidents to the City Council and for publishing such complaints and material incidents on its website.

3. Align the Discipline Code definition of bullying with the NYCRR§100.2 definition.

The DOE partially agrees and will take this recommendation under advisement. The DOE regularly updates the Discipline Code to align with evolving research to ensure schools foster environments most conducive to learning. The DOE will take into consideration local and national models of school climate supports, including the State definition of bullying and definitions used in other school districts nationally, to ensure the Discipline Code reflects progressive disciplinary practices.

4. Require more frequent mandatory RFA training and track whether such training took place.

It is current practice to track RFA training; the DOE partially agrees with this recommendation and is reviewing it further. While there are challenges for mandating training for pedagogues outside of their contractual obligations, we will explore options for making trainings more accessible and readily available for school-based staff in an effort to ensure that all staff and liaisons are made aware of research-based best practices. Tracking such trainings centrally has been a current practice since the 2015-2016 school year, when OSYD launched the Professional Development database to track professional trainings and to ensure that staff receive Continuing Teacher and Leader Education (CTLE) credit for State certification. Additionally, to ensure school staff have continuous access to RFA trainings, we recently created RFA Conversations, a web-based training module, which has been utilized by 3,900 DOE employees since it was launched in February 2018.

5. Ensure all school employees responsible for entering incidents into OORS have had appropriate training to adequately and accurately document incidents.

This is current practice. The DOE is exploring options to expand OORS training for staff who have been provisioned by their principals to document incidents in OORS. OORS trainings are offered in the Spring by the Research and Resource Center and through the Borough Safety Directors as needed. Borough Safety Directors are also tasked with reviewing OORS and its governing policies and procedures at their bi-annual Emergency Readiness training mandated for school principals.

State Comptroller's Comment - We also applaud DOE for now exploring options to expand OORS training and for tasking certain employees with biannually reviewing OORS governing policies and procedures.

6. Ensure that schools comply with timeliness requirements established by the Chancellor's Regulations.

This is current practice.

State Comptroller's Comment - Our audit determined that DOE was not always complying with the timeliness requirements established by the Chancellor's Regulations.

Chancellor's Regulation A-412 states that schools have 24 hours after being informed of an incident to document the incident in OORS. The DOE monitors the timeliness of incident submission to ensure schools are compliant with this regulation. Compliance is included in the principal's annual rating via the compliance checklist. Principal ratings are given and monitored by their Superintendents.

The DOE concludes that it is fully in compliance with DASA and guidance set forth by the State. The DOE has a robust incident reporting process and has created a data tracker for school support staff to monitor trends in schools for multiple data points that may impact school climate. Beginning with the 2017-18 school year, staff in the DOE's Office of Safety and Youth Development review every incident documented in OORS for materiality to ensure accurate reporting. However, we acknowledge that our duty to our students goes beyond simply meeting the requirements of DASA, and that we must ensure all children attend school in a safe, welcoming, and caring environment. Our new Division of School Climate and Wellness unifies multiple offices to strengthen this work, and we are committed to working with schools to develop action plans tailored to support the needs of every student. We are continuously working to improve supports to students and school staff around school climate, and we welcome the partnership of the OSC in creating a supportive, positive school climate for every public school student.

Sincerely,

LaShawn Robinson
Deputy Chancellor
School Climate and Wellness

cc: Danya Labban

Attachment 1

New York State Education Department

Definition of a Material Incident of Discrimination, Harassment, and Bullying (excluding Cyberbullying)

"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.(2) In addition, such term shall include a verified incident or series of related incidents of harassment or bullying that occur off school property, as defined in Commissioner's regulation §100.2(kk)(1)(viii). Such conduct shall include, but is not limited to, threats, intimidation or abuse based on a person's actual or perceived race, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender, or sex. Commissioner's regulation 100.2(kk)(1)(viii) provides that harassment or bullying means the creation of a hostile environment by conduct or by threats, intimidation or abuse that either: (a) has or would have the effect of unreasonably and substantially interfering with a student's educational performance, opportunities or benefits, or mental, emotional and/or physical well-being, including conduct, threats, intimidation or abuse that reasonably causes or would reasonably be expected to cause emotional harm; or (b) reasonably causes or would reasonably be expected to cause physical injury to a student or to cause a student to fear for his or her physical safety. Such definition shall include acts of harassment or bullying that occur on school property, at a school function, or off school property where such act 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. For the purposes of this definition the term "threats, intimidation or abuse" shall include verbal and non-verbal actions" (SED: http://www.p12.nysed.gov/sss/ssae/schoolsafetv/vadir/glossary201718.html).