

AMENDMENT TO THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to Education Law sections 101, 207, 305, 308, 2802, and Chapter 482 of the Laws of 2010.

1. Subdivision (gg) of section 100.2 of the Regulations of the Commissioner of Education shall be amended, effective July 1, 2017 to read as follows:

(gg) Uniform violent or disruptive incident reporting system. School districts, boards of cooperative educational services, charter schools and county vocational education and extension boards shall submit to the commissioner annual reports of violent or disruptive incidents that occurred in the prior school year, commencing with the 2001-2002 school year, in accordance with Education Law, section 2802 and this subdivision.

(1) Definitions. For the purposes of this subdivision:

(i)...

(ii) ...

(iii) Physical injury means impairment of physical condition or substantial pain and includes, but is not limited to, black eyes, welts, abrasions, bruises, cuts not requiring stitches, swelling and headaches not related to a concussion.

(iv) Serious physical injury means physical injury which creates a substantial risk of death or which causes death or serious and protracted disfigurement or protracted impairment of health or protracted loss or impairment of the function of any bodily organ and requires hospitalization or treatment in an emergency medical care facility outside of school, including but not limited to, a bullet wound, fractured or broken bones or

teeth, concussions, cuts requiring stitches and any other injury involving risk of death or disfigurement.

(v)...

(vi) Violent or disruptive incident shall mean one of the following categories of incidents that occurs on school property of the school district, board of cooperative educational services, charter school or county vocational education and extension board, committed with or without a weapon (except in the case of weapons possession):

(a) Homicide. Any intentional violent conduct which results in the death of another person.

(b) Sex offenses.

(1) Forcible sex offenses. [Forcible sex offenses involving forcible compulsion. Incidents involving forcible compulsion and completed or attempted sexual intercourse, oral sexual conduct, anal sexual conduct or aggravated sexual contact with or without a weapon, including, but not limited to, rape and sodomy.] Sex offenses involving forcible compulsion and completed or attempted sexual intercourse, oral sexual conduct, anal sexual conduct or aggravated sexual contact, with or without a weapon including but not limited to, rape and sodomy; or resulting from forcibly touching or grabbing another student on a part of the body that is generally regarded as private, which includes, but it not limited to the buttocks, breasts, or genitalia.

(2) Other sex offenses. Other non-consensual sex offenses involving inappropriate sexual contact [but no forcible compulsion], including, but not limited to, touching another student on a part of the body that is generally regarded as private, which includes, but is not limited to, the buttocks, breasts, and genitalia, removing

another student's clothing to reveal underwear or private body parts, or brushing or rubbing against another person in a sexual manner. Other sex offenses shall also include, but not be limited to conduct that may be consensual or involve a child who is incapable of consent by reason of disability or because he or she is under 17 years of age, provided that such term shall not include consensual sexual conduct involving only students, and/or non-students 18 years of age or under, unless at least one of the individuals participating in the conduct is at least four years older than the youngest individual participating in the conduct.

(c) [Robbery. Forcible stealing of property from a person by using or threatening the immediate use of physical force upon that person, with or without the use of a weapon.

(d) Assault [involving serious physical injury]. Intentionally or recklessly causing [serious] physical injury to another person, with or without a weapon, in violation of the school district code of conduct [.] which shall include either;

(1) engaging in behavior which causes serious physical injury; or,

(2) engaging in behavior which causes physical injury.

[(e). . .

(f) . . .

(g) . . .

(h) . . .

(i). . .

(j) ...]

(d) 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. 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 subclause (viii) of paragraph (1) of subdivision (kk) of this section, 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; provided that nothing in this subdivision shall be construed to prohibit a denial of admission into, or exclusion from, a course of instruction based on a person's gender that would be permissible under Education Law sections 3201-a or 2854(2)(a) and Title IX of the Education Amendments of 1972 (20 U.S.C. section 1681, et seq.), or to prohibit, as discrimination based on disability, actions that would be permissible under section 504 of the Rehabilitation Act of 1973.

[(k) . . .

(l) . . .

(m) . . .

(n)] (e) Bomb threat. A telephoned, written or electronic message that a bomb, explosive, chemical or biological weapon has been or will be placed on school property.

[(o)] (f) False alarm. [Falsely activating] Causing a fire alarm or other disaster alarm to be activated knowing there is no danger, or through false reporting of a fire or disaster.

[(p) Riot. Simultaneously with four or more persons engages in tumultuous and violent conduct and thereby intentionally or recklessly causes or creates a grave risk of physical injury or substantial property damage or causes public alarm.

(q) (g) Weapons possession. Possession of [a weapon] one or more weapons as defined by subparagraph (v) of this paragraph, except possession in a classroom or laboratory as part of an instructional program or in a school-related activity under the supervision of a teacher or other school personnel as authorized by school officials[.]
which are discovered either through:

(1) routine security checks; or

(2) weapons possessed at a school function or on school property which are not discovered through a routine security check, including but not limited to, weapons found in the possession of a student or within a locker.

[(r) (h) [Drug use] Use, possession or sale of drugs. Illegally using [or], possessing, or being under the influence of a controlled substance or marijuana, on school property or at a school function, including having such substance on a person in a locker, vehicle, or other personal space; selling or distributing a controlled substance or marijuana, on school property; finding a controlled substance or marijuana, on school property that is not in the possession of any person; provided that nothing herein shall be construed to apply to the lawful administration of a prescription drug on school property.

[(s) (i) [Alcohol use] Use, possession or sale of alcohol. Illegally using [or], [Possessing] possessing, or being under the influence of alcohol on school property or at a school function, including having such substance on a person or in a locker,

vehicle, or other personal space; illegally selling or distributing alcohol on school property or at a school function; finding alcohol on school property that is not in the possession of any person.

[(t) Other disruptive incidents. Other incidents involving disruption of the educational process.]

(2) Recording of offenses

(i) For purposes of reporting pursuant to this subdivision, each incident shall be reported once in the highest ranking category of offense that applies, except that incidents involving a weapon and one of the offenses listed in clauses (1)(vi)(a) through [(p)] (f) of this subdivision shall be reported in the highest ranking category of offense that applies as an offense committed with a weapon, and not in weapons possession; and incidents involving drug use, possession or sale and/or alcohol use, possession or sale and another offense shall be reported in the highest ranking category in clauses (1)(vi)(a) through [(q)] (g) of this subdivision that applies. If the offense involves only the use, possession or sale of drugs or alcohol, it shall be recorded in the applicable category of drug or alcohol use, possession or sale as an incident involving drug or alcohol use, possession or sale only. For purposes of determining the highest ranking offense pursuant to this subparagraph, offenses shall be ranked in the order that they appear in clauses (1)(vi)(a) through [(p)] (f) of this subdivision, followed by weapons possession, drug use, possession or sale and alcohol use, possession or sale[, and other disruptive incidents].

(ii) [The offenses described in clauses (1)(vi)(i), (k), (l), (m), (p) and (t) of this subdivision shall only be reported where such behavior, under the district's code of

conduct, is of sufficient seriousness to warrant the suspension or removal of a student or the referral of a student to a counseling or treatment program or transfer of a student to an alternative education program, or the referral of a student to the juvenile justice system, or disciplinary action against or dismissal of a school employee, or notification of law enforcement of the commission of a crime, whether or not the perpetrators are identified.] All incidents involving bomb threats or false alarms as defined in clauses (1)(vi)[(n)] (e) and [(o)] (f) of this subdivision shall be reported. All incidents involving [intimidation, harassment, menacing or bullying behavior] material incidents of harassment, bullying, and/or discrimination as defined in clause (1)(vi)[(j)] (d) of this subdivision [that are the subject of a written or oral complaint to the school principal or other school administrator responsible for school discipline, or are otherwise directly observed by such principal or administrator,] shall be reported.

(3)...

(4) Content of report. Each individual violent or disruptive incident report shall be in a form prescribed by the commissioner and shall contain the following information concerning each violent or disruptive incident that occurred in the prior school year:

(i)...

(ii)...

(iii)

(iv) the types of incident, identified by category listed in clauses (1)(vi)(a) through [(t)](i) of this subdivision;

(v)...

(vii)...

(viii)...

(ix)...

(x)...

(5)...

(6)...

(7)...

(8) School violence index. Each school year, commencing with the 2005-2006 school year, the department shall establish a school violence index as a comparative measure of the level of school violence in a school. The school violence index will be computed in accordance with a formula established by the commissioner that takes into account the enrollment of the school and is weighted to reflect the most serious violent incidents, which shall include but need not be limited to the following categories of incidents: homicide, forcible sexual offense, [robbery,] assault resulting in serious physical injury, assault resulting in physical injury, [arson, kidnapping,] and incidents involving the possession, use or threatened use of a weapon.