

AMENDMENT TO THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to sections 15, 101, 207, 305, 308, and 2802 of the Education Law.

1. Subdivision (gg) of section 100.2 of the Regulations of the Commissioner of Education is amended to read as follows:

(gg) Uniform violent or disruptive incident reporting system also known as the "School safety and educational climate 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 sections 15 and 2802 of the 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) Weapon [means one or more of the following dangerous instruments:

(a) a firearm, including but not limited to a rifle, shotgun, pistol, handgun, silencer, electronic dart gun, stun gun, machine gun, airgun or spring gun;

(b) a switchblade knife, gravity knife, pilum ballistic knife, cane sword, dagger, stiletto, dirk, razor, box cutter, metal knuckle knife, utility knife or other dangerous knife;

(c) a billy club, blackjack, bludgeon, chukka stick, or metal knuckles;

(d) a sandbag or sandclub;

(e) a sling shot or slungshot;

(f) a martial arts instrument, including but not limited to a kung fu star, ninja star, nin chuck, or shirken;

(g) an explosive, including but not limited to a firecracker or other fireworks;

(h) a deadly or dangerous chemical, including but not limited to a strong acid or base, mace, or pepper spray;

(i) an imitation gun;

(j) loaded or blank cartridges or other ammunition; or

(k) any other dangerous or deadly instrument possessed with intent to use the same unlawfully against another] shall mean any weapon defined in Article 265 of the

Penal Law.

[(vi)] (iv) 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) ...

(b) [Sex offenses.

(1) Forcible sex offenses. 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 is not limited to the buttocks, breasts, or genitalia.

(2) Other sex offenses. Other non-consensual sex offenses involving inappropriate sexual contact, 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.] Sexual offense. An act committed by a person 10 years of age or older which would constitute a felony under Article 130 of the Penal Law, taking into consideration the developmental

capacity of the person to form the intent to commit such act, and where the school has referred the person to the police for the act.

(c) Assault. [Intentionally or recklessly causing 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.] An act committed by a person 10 years of age or older which would constitute a felony under Article 120 of the Penal Law, taking into consideration the developmental capacity of the person to form the intent to commit such act, and where the school has referred the person to the police for the act.

(d) ...

(e) Threat (other than bomb threat or false alarm). A verbal, telephoned, written or electronic message of a threat of violence on school property or at a school related function.

[(e)] (f) 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.

[(f)] (g) False alarm. 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.

[(g)] (h) Weapons possession. [Possession of 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.] An act committed by a person 10 years of age or older which would constitute a felony under Article 265 of the Penal Law, taking into consideration the developmental capacity of the person to form the intent to commit such act, and where the school has referred the person to the police for the act.

(h)] (i) ...

[(i)] (j) ...

(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)](iv)(a) through [(f)](g) 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)](iv)(a) through [(g)](h) 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)](iv)(a) through [(f)](g) of this subdivision, followed by weapons possession, drug use, possession or sale and alcohol use, possession or sale.

(ii) All incidents involving threats (other than bomb threats), bomb threats or false alarms as defined in clauses (1)[(vi)](iv)(e) [and (f)] through (g) of this subdivision shall be reported. All incidents involving material incidents of harassment, bullying, and/or discrimination as defined in clause (1)[(vi)](iv)(d) of this subdivision shall be reported.

(3) Submission of report. Each annual school safety and educational climate incident report shall be in a form prescribed by the commissioner and shall contain such information as the commissioner shall prescribe, including but not limited to information on the frequency and types of incidents, offenders, victims and student discipline or referral actions taken, as is available on the date the annual report is submitted. Each school district, board of cooperative educational services, charter school and county vocational education and extension board shall annually submit its report on violent or disruptive incidents, in the manner prescribed by the commissioner, on or before the basic educational data system (BEDS) reporting deadline or such other date as determined by the commissioner.

(4) ...

(5) [Preparation of report. Each annual violent or disruptive incident report shall be in a form prescribed by the commissioner and shall contain such information as the commissioner shall prescribe, including but not limited to information on the frequency

and types of incidents, offenders, victims and student discipline or referral actions taken, as is available on the date the annual report is submitted.

(6)] Local procedures...

[(7)] (6) Confidentiality...

[(8)] (7) 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]only the following categories of incidents: homicide, [forcible] sexual offense, assault [resulting in serious physical injury, assault resulting in physical injury], and incidents involving the possession[,] or use [or threatened use] of a weapon.

(8) Persistently dangerous schools. For purposes of determining persistently dangerous schools pursuant to section 120.3 of this Subchapter, only the most serious violent incidents, which shall include only the following categories of incidents: homicide, sexual offense, and incidents involving the possession or use of a weapon, as defined in this subdivision, shall be used in making such determination.

2. Paragraph (4) of subdivision (cc) of section 100.2 of the Regulations of the Commissioner of Education is amended to read as follows:

(4) Violent or disruptive incident report. Commencing with the 2002-2003 school year, the BOCES report card shall include a summary of the BOCES' annual violent or disruptive incident report, also known as the "school safety and educational climate

report” as required pursuant to subdivision (gg) of this section in a format containing such information as the commissioner shall prescribe.

3. Subdivision (a) of section 120.3 of the Regulations of the Commissioner of Education is amended to read as follows:

(a) Persistently dangerous schools. Pursuant to guidelines to be developed by the Commissioner in consultation with a representative sample of local educational agencies, the Commissioner shall determine which public elementary and secondary schools are persistently dangerous. A determination that a school is persistently dangerous shall be based upon objective information including, at a minimum, data submitted through the uniform violent incident reporting system, also known as the “school safety and educational climate report”, established pursuant to section 2802 of the Education Law and pursuant to section 100.2(gg) of this Subchapter, over a period of two years.