

Category: STUDENTS

Issued: 11/28/18

Number: **A-421**

Subject: PUPIL BEHAVIOR AND DISCIPLINE – VERBAL ABUSE

Page: 1 of 2

SUMMARY OF CHANGES

This Regulation updates and supersedes Chancellor's Regulation A-421 dated October 30, 2014. It defines and prohibits the verbal abuse of students and sets forth the reporting and investigative requirements for allegations of verbal abuse.

Changes:

- Removes the requirement that for verbal abuse that does not occur on a school campus, the off-school behavior must disrupt or foreseeably disrupt the educational process or endanger or foreseeably endanger the health, safety, morals or welfare of the school community. (See page 1, Section I.A)
- Explains that for the purposes of this Regulation, the designee of the principal is a supervisor designated by the principal. (See page 1, footnote 4)
- Changes the reporting time period for principals/designees to report allegations of verbal abuse to the Office of Special Investigations and enter the allegations into the Online Occurrence Reporting System from 24 hours to one school day. (See page 2, Section IV.B.1)
- Clarifies that the principal/designee must obtain a witness statement from any reporting staff member. (See page 2, Section IV.B.3)
- Explains that if the alleged conduct constitutes a crime, the principal/designee must follow the notification and reporting requirements set forth in Chancellor's Regulation A-412. (See page 2, Section IV.B.4)
- Requires that if the principal is the subject of the complaint, the superintendent must promptly notify the parent of the alleged victim that a complaint has been filed. (See page 2, Section IV.E)
- Clarifies that when a principal requests reassignment of an employee pending completion of an investigation, such request will be reviewed by the Office of Personnel Investigation. (See page 3, Section V.A)
- Clarifies that principals/designees must conduct school-based investigations if allegations of verbal abuse are referred to them by the Office of Special Investigations. (See page 3, Section VI.A.2)
- Requires a principal/designee to immediately notify the Office of Special Investigations in writing if the subject of a school-based investigation is no longer working at the school. (See page 3, Section VI.A.2)
- Clarifies in footnote 9 that the principal/designee may conduct the investigative and disciplinary meetings at the same time as long as the accused employee has an opportunity to respond to the allegations and the principal/designee considers any such response and all other evidence prior to making a final determination and imposing discipline. (See page 4, footnote 9)
- Changes "student specific information" to "student's personally identifiable information" in accordance with the language used in Chancellor's Regulation A-820 and the Federal Educational Rights and Privacy Act. (See page 4, Section VI.B.4.a)
- Changes the timeframe for completing a school-based investigation and making a determination regarding an allegation of verbal abuse from 10 days to 15 days from the date of receiving the referral from the Office of Special Investigations. (See page 4, Section VI.C.1)
- Clarifies that the failure to timely complete a school-based investigation may result in disciplinary action. (See page 4, Section VI.C.3)

Category: STUDENTS

Issued: 11/28/18

Number: **A-421**

Subject: PUPIL BEHAVIOR AND DISCIPLINE – VERBAL ABUSE

Page: 2 of 2

- Explains that the principal/designee shall determine whether interventions and supports should be provided to a student who is the victim of verbal abuse. (See page 5, Section VI.D)
- Adds a provision allowing the Chancellor or his/her designee to waive part or all of this Regulation in exceptional circumstances and in the best interests of the school system (See page 5, Section XI)
- The 48-hour notice, waiver of right to union representation and privacy acknowledgement forms are available to principals/designees on the Employee InfoHub, Senior Field Counsel page. (See footnotes 6 and 7 on page 3, and footnote 8 on page 4)
- Changes to Attachment No. 1 clarify dispositional options. (See Attachment No. 1, pages 4-5)

ABSTRACT

This Regulation defines and prohibits verbal abuse of students, and sets forth the procedures for reporting and investigating allegations of verbal abuse.

I. POLICY

- A. It is the policy of the Department of Education (“DOE”) to prohibit verbal abuse of students by DOE staff members, custodial workers, vendors, consultants, Community Based Organization (“CBO”) staff and similar individuals on school property, on school trips, and at other school-related functions off school property.
- B. Disruptive behavior by a student must never be punished by verbal abuse. Schools should address a student’s disruptive behavior through offering guidance interventions, working with parents, and addressing behavior in accordance with Chancellor’s Regulation A-443 and the DOE’s Citywide Behavioral Expectations to Support Student Learning (“Discipline Code”).
- C. Employees who violate this Regulation will be subject to appropriate disciplinary action.

II. DEFINITIONS

- A. Verbal abuse¹ is defined as language (written² or oral) about or directed toward students, that:
 - 1. Belittles, embarrasses or subjects students to ridicule; or
 - 2. Has or would have the effect of unreasonably and substantially interfering with a student’s educational performance or ability to participate in or benefit from an educational program, school-sponsored activity or any other aspect of a student’s education; or
 - 3. Has or would have the effect of unreasonably and substantially interfering with a student’s mental, emotional, or physical well-being; or
 - 4. Reasonably causes or would reasonably be expected to cause a student to fear for his/her physical safety; or
 - 5. Reasonably causes or would reasonably be expected to cause physical injury or emotional harm to a student.
- B. Verbal statements by DOE staff members, custodial workers, vendors, consultants, CBO staff and similar individuals directed to or about students that are discriminatory based on race, color, national origin, alienage/citizenship status, age, ethnicity, religion, creed, gender (sex), disability, sexual orientation, or weight will be investigated under the procedures of Chancellor’s Regulation A-830. Schools should refer any such complaints to the DOE’s Office of Equal Opportunity and Diversity Management.

III. NOTIFICATION TO STAFF

The principal³/designee⁴ must ensure that all members of the staff, including non-instructional staff, are informed of the DOE’s policy and rules with respect to verbal abuse. At a minimum, the principal/designee must ensure that:

- A. At the beginning of each school year, the importance of this Regulation is reviewed with all staff, a copy of this Regulation is distributed to every staff member, and every staff member has signed an acknowledgment of its receipt;

¹This Regulation does not govern corporal punishment. The procedures for reporting and addressing corporal punishment are set forth in Chancellor’s Regulation A-420.

²Written language includes language that is transmitted electronically.

³When used in this Regulation, the term principal also refers to site supervisors.

⁴For purposes of this Regulation, the term designee means a supervisor designated by the principal.

- B. The importance of this Regulation is reviewed with every staff member who comes to the school after the beginning of the school year, a copy of this Regulation is provided to such staff member, and such staff member has signed an acknowledgment of its receipt; and
- C. As needed during the school year, this Regulation is redistributed and/or technical assistance is provided regarding this Regulation.

IV. **REPORTING AN ALLEGATION OF VERBAL ABUSE**

The Office of Special Investigations (“OSI”) is responsible for the intake, evaluation, review, follow-up and dissemination of information to various offices within the DOE and to other appropriate entities with respect to allegations of verbal abuse.

A. Staff Member Obligations

- 1. Any staff member who witnesses or otherwise has knowledge or information about a student who may have been a victim of verbal abuse is required to orally report the allegation to the principal/designee within one school day of learning of the allegation. The staff member also must complete a witness statement as set forth in Section IV.B.3 below.
- 2. If the allegation of verbal abuse is against the principal, the staff member must make a report of verbal abuse directly to OSI using OSI’s online reporting system at https://www.nycenet.edu/offices/osi/COR_Form/form.aspx.

B. Principal/Designee Obligations

- 1. The principal or designee must immediately report all allegations of verbal abuse of students by DOE employees, custodial workers, vendors, consultants, CBO staff and similar individuals to OSI within one school day of learning of the allegation by entering the information into the DOE’s Online Occurrence Reporting System (“OORS”).
 - 2. If the principal/designee enters a report of alleged verbal abuse into OORS, he/she will automatically be routed to OSI’s online reporting system.
 - 3. The principal/designee must obtain a witness statement from any reporting staff member (using the form in OORS) and enter the statement into OORS within two school days of learning of the allegation.
 - 4. After making a report to OSI and obtaining witness statements from any reporting staff members, the principal/designee shall take no further investigative action until OSI provides instructions as to how to proceed, except that if the alleged conduct constitutes a crime, the principal/designee must follow the notification and reporting requirements set forth in Chancellor’s Regulation A-412, including immediately contacting the New York City Police Department (“NYPD”) and the Office of the Special Commissioner of Investigation (“SCI”).
- C. Once a report of verbal abuse is received in OSI’s online reporting system, that system will automatically generate a confirmation number (“OSI number”). The OSI number must be referenced in subsequent communications regarding the reported incident.
 - D. Parents, students, and non-DOE staff may report a complaint of verbal abuse by notifying the principal/designee of the school the alleged victim attends, by notifying OSI directly through OSI’s online reporting system at https://www.nycenet.edu/office/osi?CPR_Form/form.aspx, or by contacting OSI at (718) 935-3800. Anonymous complaints may be filed by using the OSI online reporting system.
 - E. If a complaint has been filed by someone other than the parent of the alleged victim, the principal/designee must promptly notify the parent of the alleged victim that a complaint has been filed. If the principal is the subject of the complaint, the superintendent must promptly notify the parent of the alleged victim that a complaint has been filed.

V. REMOVAL OF EMPLOYEE DURING INVESTIGATION

During the course of a verbal abuse investigation, the subject employee may be removed from assignment with students to safeguard the health, welfare, and safety of students, as well as the integrity of the investigation, as set forth below.

- A. Upon receipt of a complaint of verbal abuse, OSI will recommend whether the employee should be removed from his/her assignment pending completion of the investigation. If OSI does not recommend removal initially, the principal may request removal, subject to review by the Office of Personnel Investigation.
- B. When determining whether to remove the employee, the following should be considered: the severity of the alleged behavior; the prior record of the accused employee; the likely disciplinary action if the allegations are substantiated; the nature and frequency of the contact between the subject and students; and any other relevant factors.
- C. If an employee has been removed from his or her assignment pending the outcome of a verbal abuse investigation, the principal shall inform the employee, in writing, that the employee is the subject of an investigation no later than five schools days from the date of the employee's removal.

VI. INVESTIGATION

- A. Allegations of verbal abuse will be investigated by OSI or handled by the school as a School-Based Investigation ("SBI"). After OSI receives a report of verbal abuse, OSI will advise the principal whether OSI will conduct the investigation or whether it will be handled as an SBI.
 1. All DOE employees are required to cooperate with investigations of verbal abuse, and are required to appear for an interview if summoned. If requested by OSI, principals/designees must assist OSI by coordinating and organizing interviews of school staff, and by making requested documents available.
 2. Principals/designees are required to investigate any SBI referred to them by OSI. Senior Field Counsel will provide guidance and instruction to the principal/designee as needed (see Section VI.C). If the subject of the SBI is no longer at the school at the time of the referral, the principal/designee must immediately notify OSI in writing, and OSI will provide further direction.
 3. If, during the course of an investigation, there is reasonable suspicion to believe that a crime has been committed, the NYPD and SCI must be contacted immediately, and the investigation must stop pending receipt of further direction.
- B. Whether the case is investigated by OSI or by the school, the following investigative steps must be taken:
 1. Interview the alleged victims and student/staff witnesses separately and obtain any written statements as quickly as practicable.⁵
 2. Provide the accused employee with 48-hour written notice of the right to appear with union representation at an investigative interview to discuss the allegation of verbal abuse using the 48-hour notification form⁶.
 3. The investigative interview may not be convened without union representation or prior to 48 hours after the employee's receipt of the written notice unless the employee waives his or her right to the 48-hour notice and/or union representation. In such a case, the employee must sign a waiver.⁷
 4. Meet with the accused employee as necessary to make a determination. At the

⁵ Interviews with student witnesses do not require parental notification or consent. If a parent is not present, the principal/designee may wish to conduct the interview in the presence of an uninvolved administrator or staff member, such as an assistant principal, dean, social worker, or guidance counselor.

⁶ The 48-hour notification form can be accessed through the Employee InfoHub (Senior Field Counsel page).

⁷ The waiver form can be accessed through the Employee InfoHub (Senior Field Counsel page).

meeting, the employee must be provided with a description of the allegation of verbal abuse and the opportunity to respond to the allegation.

- a. If the accused employee requests an opportunity to review student witness statements, or adult witness statements that contain any student's personally identifiable information, the employee must be provided with the opportunity to review and sign a privacy acknowledgment in the presence of union representation (where such representation is present) acknowledging that the employee will not disclose the contents of the statements or the identity of the authors, or retaliate against the author(s) of the statements. The union representative must also be provided the opportunity to review and sign the privacy acknowledgment.⁸ Copies of the acknowledgment must be provided to the accused employee and/or the union representative upon request.
 - b. If the accused employee and the union representative sign the privacy acknowledgement, the employee and union representative shall be shown all witness statements in un-redacted form at the meeting. The employee and his/her union representative shall be permitted to transcribe witness statements but shall not be permitted to retain copies of such witness statements.
 - c. If the accused employee chooses not to sign the privacy acknowledgement, all personally identifiable information pertaining to any student other than the victim must be redacted from student victim's statement, student witness statements, and adult witness statements before they are shown to the accused employee and the union representative at the meeting. The accused employee and the union representative shall be shown all witness statements in redacted form. The employee and his/her union representative shall be permitted to transcribe such redacted statements but shall not be permitted to retain copies of these statements.
5. Evaluate the evidence and the credibility of all witnesses, including the alleged victim and the accused employee, and determine whether the complaint is substantiated.
 6. If the complaint is substantiated, hold a disciplinary conference.⁹ All accused employees and their union representatives present at the disciplinary conference are entitled to see and retain copies of all witness statements prior to administration of any disciplinary action. If an employee and the employee's union representative refuse to sign the privacy acknowledgement, all personally identifiable information pertaining to any student other than the victim must be redacted from the student victim's statement, student witness statements, and adult witness statements prior to providing them to the accused employee and the union representative.
- C. For School-Based Investigations only:
1. Within 15 school days of receiving the complaint, the principal must determine whether the complaint is substantiated and must complete the Alleged Corporal Punishment and/or Verbal Abuse – Report of Investigation Form, explaining the conclusions reached with respect to each allegation (see Attachment No. 1, Report of Investigation Form). If additional time is required to complete the investigation due to extenuating circumstances, principals should consult with Senior Field Counsel.
 2. When an SBI is complete, principals must scan/email or fax the completed and signed Report of Investigation Form, along with all interview notes, written statements, and investigative findings, to Senior Field Counsel. SBIs are considered closed only after the principal receives confirmation from Senior Field Counsel to this effect.
 3. Failure to timely complete an SBI may lead to disciplinary action.

⁸ The privacy acknowledgement form can be accessed through the Employee InfoHub (Senior Field Counsel page).

⁹ The principal/designee may conduct the investigative and disciplinary meetings at the same time as long as the accused employee has an opportunity to respond to the allegations and the principal/designee considers any such response and all other evidence prior to making a final determination and imposing discipline.

- D. Once the case is closed, OSI, or in the case of an SBI, the principal/designee, must inform the parent of the alleged victim whether the allegations were substantiated or not substantiated. The principal/designee shall determine whether interventions and supports should be provided to the student, and where warranted, provide the parent with the opportunity to discuss such interventions and supports.

VII. PERSONNEL ACTIONS

- A. The principal must take appropriate disciplinary action against any staff member against whom the allegations of verbal abuse are substantiated. Nothing in this Regulation prevents a principal from counseling or disciplining an employee for inappropriate conduct and/or unprofessional behavior that is not otherwise in violation of this Regulation. For assistance with disciplinary letters, principals should consult their Senior Field Counsel.
- B. Once a principal receives confirmation from Senior Field Counsel that the case is closed, the accused staff member must be informed of the results of the investigation. If the accused employee was reassigned during the pendency of the investigation and there is no other reason for reassignment, the employee must be returned to his or her regular assignment.
- C. An employee who violates any provision of this Regulation may be subject to discipline, which may include termination, or other appropriate follow-up action.

VIII. CONFIDENTIALITY

It is the DOE's policy to respect the privacy of all parties and witnesses to complaints brought under this Regulation. However, the need for confidentiality must be balanced with the obligation to cooperate with investigations, to provide due process to the accused, and/or to take necessary action to resolve the complaint. School employees who have knowledge about an investigation of verbal abuse are prohibited from disclosing any information regarding the complaint to unauthorized parties, including the names of the accused employee(s), student victim(s), and witnesses, except as required by law.

IX. TAMPERING/RETALIATION PROHIBITED

Any attempt to tamper with or impede a verbal abuse investigation or to retaliate against those who experience, report, or witness verbal abuse is strictly prohibited and may result in disciplinary action. Such behavior must be reported immediately to SCI at (212) 510-1400 or intake@nycsci.org.

X. REPORT TO NEW YORK STATE EDUCATION DEPARTMENT

The DOE submits a semi-annual report regarding verbal abuse complaints to the Commissioner of Education by January 15th and July 15th of each year. The report sets forth the substance of each complaint, the result of each investigation, and the action, if any, taken by the local school authorities in each case.

XI. WAIVER

The Chancellor or his/her designee may waive all or part of this Regulation in exceptional circumstances and in the best interests of the school system.

XII. INQUIRIES

Inquiries pertaining to this Regulation should be addressed to:

Telephone:
718-935-3800

Office of Special Investigations
N.Y.C. Department of Education
65 Court Street – Room 922
Brooklyn, NY 11201

Email: OSI-Inquiries@schools.nyc.gov

For School-Based Investigations, contact
your *Senior Field Counsel*



OSI CASE # _____

OFFICE OF SPECIAL INVESTIGATIONS (OSI)
65 COURT STREET - ROOM 922
BROOKLYN, NY 11201
PHONE - 718-935-3800

ALLEGED CORPORAL PUNISHMENT AND/OR VERBAL ABUSE
REPORT OF INVESTIGATION

Date of Report: _____ OSI Case Number: _____

1. SUBJECT EMPLOYEE'S INFORMATION

Name: _____ File Number/Employee Number: _____

Position: _____ Home Address: _____

Date of Birth: _____ License(s): _____

School: _____ District: _____ Boro: _____ Region: _____

Years of Service: _____

Tenured: _____ Probationary: _____ CPT: _____ Per Diem: _____

2. EMPLOYEE HISTORY

Prior adverse ratings/actions Yes No If yes, explain, including date(s):

Previous allegations of corporal punishment or verbal abuse Yes No If yes, explain, including date(s) and report numbers:



OSI CASE # _____

3. STUDENT (COMPLAINANT/VICTIM) INFORMATION (additional information/victims may be memorialized on a separate sheet(s), which must be attached to this document before its submission)

Name: _____ Grade: _____ Date of Birth: _____

Has student made prior allegations?

If yes, explain, including date(s) and report number(s)

Yes

No

Narrative of student performance (conduct, etc.):

4. PARENT/GUARDIAN CONTACT INFORMATION

Name: _____

Address: _____

Home Telephone: _____

Business Telephone: _____

Email address: _____

Date Parent/Guardian Notified of Incident: _____

School Staff Member Who Notified Parent: _____

OSI CASE # _____

6. INCIDENT

IF STUDENT AND/OR STAFF MEMBERS MADE WRITTEN STATEMENTS, COPIES OF THOSE STATEMENTS MUST BE ATTACHED TO THIS FORM

Date of Incident: _____ Time: _____

Location: _____

Description of alleged incident: _____

After reviewing the statements and evaluating the credibility of the alleged victim, the witnesses, and the subject of this investigation, I have concluded that the following occurred: (If necessary, additional information can be included on a separate sheet(s) of paper, which must be attached)

7. FINDINGS

A determination is required. Select from the options below.

_____ The allegation(s) of corporal punishment were unsubstantiated (i.e., not substantiated).

_____ The allegation(s) of corporal punishment were substantiated.

_____ The allegation(s) of verbal abuse were unsubstantiated (i.e., not substantiated).

_____ The allegation(s) of verbal abuse were substantiated in that the conduct belittles, embarrasses or subjects the student to ridicule.

OSI CASE # _____

_____ The allegation(s) of verbal abuse were substantiated and the conduct constitutes a material act of verbal abuse in that the language:

1. Has or would have the effect of unreasonably and substantially interfering with the student's educational performance or ability to participate in or benefit from an educational program, school-sponsored activity or any other aspect of a student's education; or
2. Has or would have the effect of unreasonably and substantially interfering with the student's mental, emotional, or physical well-being; or
3. Reasonably causes or would reasonably be expected to cause the student to fear for his/her physical safety; or
4. Reasonably causes or would reasonably be expected to cause physical injury or emotional harm to the student.

_____ The allegation(s) were not substantiated, but the subject is found to have exercised poor judgment.

STOP: Please submit pages 1-5 of this document to your assigned Senior Field Counsel (SFC) for review. If disciplinary action is to be taken, it can be taken only after your SFC has reviewed all of the required documentation and deems the investigation complete.

Please note: In all cases where an allegation of corporal punishment and/or verbal abuse has been substantiated or where it has been concluded that poor judgment was exercised, disciplinary action or appropriate follow-up action must be taken.

8. CONSULTATION WITH SENIOR FIELD COUNSEL

_____ Senior Field Counsel consulted on: _____
 Date

9. ACTION TAKEN FOLLOWING CONSULTATION WITH SENIOR FIELD COUNSEL

| | |
|---|-------|
| _____ Verbal warning | _____ |
| | Date |
| _____ Letter to file | _____ |
| | Date |
| _____ Counseling memo | _____ |
| | Date |
| _____ Disciplinary charges recommended ¹ | _____ |
| | Date |
| _____ Termination of employment | _____ |
| | Date |
| _____ Other (specify) _____ | _____ |
| | Date |

¹ If the subject is a tenured employee, and disciplinary charges under State Education Law section 3020-a are recommended due to the serious or repetitive nature of the misconduct, or other factors concerning the employee's performance, the school must consult with the Deputy Counsel of the DOE's Administrative Trials Unit (212-374-6888).



OSI CASE # _____

10. PARENTAL NOTIFICATION

_____ Parent notified of findings

Date

Report Preparer's Name

Title

Report Preparer's Signature

Date Prepared