

Category: STUDENTS

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Number: **A-421**

Subject: PUPIL BEHAVIOR AND DISCIPLINE – VERBAL ABUSE

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SUMMARY OF CHANGES

This regulation supersedes Chancellor's Regulation A-421 dated September 26, 2007. It defines and prohibits the use of verbal abuse upon students. It sets forth the reporting requirements for allegations of verbal abuse of students by Department of Education employees or other staff members.

Changes:

- References Chancellor's Regulation A-412 for guidance regarding reporting matters to police.
- Provides new procedures for reporting verbal abuse involving discriminatory language.
- Clarifies that witness statements (redacted or otherwise) are available to the accused in all cases.
- Requires that findings of non-substantiation be communicated to the subject of an investigation in writing.
- Provides clarification with respect to confidentiality requirements.
- Clarifies the time frame for investigations conducted by principals.
- Clarifies that employees will be subject to discipline for "actual" acts of tampering with an investigation.

ABSTRACT

This regulation defines and prohibits the use of verbal abuse upon a student. The Chancellor may change this regulation consistent with applicable federal and state laws.

I. INTRODUCTION

Verbal abuse of students is prohibited. Disruptive behavior by a student must never be punished by use of verbal abuse. Such behavior usually reflects underlying problems that require guidance intervention. School personnel should take steps to identify the problem(s) and, working closely with parents, help the student receive maximum benefit from the educational program offered at the school. Matters concerning student behavior should be addressed in accordance with Chancellor's Regulation A-443 and the Discipline Code.

II. DEFINITIONS

Verbal abuse is not corporal punishment, but is separately proscribed by this regulation. Prohibited verbal abuse includes:

- language that tends to cause fear or physical or mental distress;
- discriminatory language based on race, color, national origin, alienage/citizenship status, ethnicity, religion, gender, disability, or sexual orientation which tends to cause fear or physical or mental distress;
- language that tends to threaten physical harm; or
- language that tends to belittle or subject students to ridicule.

III. PROHIBITION

- A. Verbal abuse of students is prohibited in and around school premises, as well as on school trips.
- B. No verbal abuse shall be inflicted in any of the public schools, nor punishment of any kind tending to cause excessive fear or physical or mental distress. Violation shall constitute grounds for dismissal.
- C. DOE employees may not use verbal abuse regardless of whether a student's parent or guardian consents to such conduct.
- D. Nothing in this regulation prevents a principal¹ from counseling or disciplining an employee for inappropriate conduct that is not otherwise in violation of this regulation.

IV. NOTIFICATION TO STAFF

The principal must inform all members of the staff of the Department's policy and rules with respect to verbal abuse. At a minimum, the principal must:

- review the importance of this regulation with all staff, distribute a copy of this regulation to every staff member, and have every staff member sign an acknowledgment of its receipt at the beginning of each school year;
- review the importance of this regulation with every staff member who comes to the school after the beginning of the school year, provide him/her with a copy of this regulation, and have the staff member sign an acknowledgment of its receipt;
- redistribute and/or provide technical assistance regarding this regulation, as needed, during the school year.

¹ When used in this regulation, the term principal also refers to site supervisors. Site supervisor refers to the person acting in a supervisory capacity to the Department of Education employee alleged to have engaged in verbal abuse.

V. REPORTING AN ALLEGATION OF VERBAL ABUSE

- A. The principal/designee must immediately report all allegations of verbal abuse of students by Department of Education employees, custodial employees, or others.* Prior to doing so, the principal or designee must verify the name(s) of the employee(s) and student(s) involved, and the nature of the violation alleged. Once that preliminary information is obtained, the principal or designee must immediately report the alleged incident to the Office of Special Investigations (OSI), via the online reporting system, at https://www.nycenet.edu/offices/osi/CPR_Form/form.aspx, except as noted below in Section VI. At that time, the online reporting system will automatically generate a confirmation number. This confirmation number must be referenced on all subsequent communications regarding the reported incident. Assistance regarding the online reporting system may be obtained by calling OSI at 718-935-3800. After making a report to OSI, the principal shall take no further investigative action until OSI provides instructions as to how to proceed.
- B. The principal/designee also must report the incident in the school system's Online Occurrence Reporting System (OORS).
 - If the supervisor who receives a report of verbal abuse is not the principal or site supervisor and the alleged verbal abuse occurs on or around school premises, the supervisor must notify the principal or site supervisor.
- C. Parents should report any complaint of verbal abuse to the school principal/site supervisor. Alternatively, parents may report the complaint by directly contacting OSI at 718-935-3800.
- D. OSI is responsible for the intake, evaluation, review, follow-up, and dissemination of information to various offices within the New York City Department of Education and to other appropriate entities with respect to allegations of verbal abuse.

VI. REPORTING AN ALLEGATION OF VERBAL ABUSE INVOLVING DISCRIMINATORY LANGUAGE

- A. The principal/designee must immediately report all allegations of verbal abuse involving discriminatory language based on race, color, national origin, alienage/citizenship, ethnicity, religion, gender, disability, or sexual orientation.* Prior to doing so, the principal/designee must verify the name(s) of the employee(s) and student(s) involved, and the nature of the violation alleged. Once that preliminary information is obtained, the principal/designee must immediately report the alleged incident to the Office of Equal Opportunity ("OEO") by filing an online complaint at <http://schools.nyc.gov/Offices/GeneralCounsel/Investigative/OEO/ComplaintForm/>, or by mailing a printed complaint form to OEO at 65 Court Street, Room 623 Brooklyn, New York 11201. OEO can also be contacted directly by email or telephone at 718-935-3320.
- B. OEO, in consultation with OSI, will determine whether the incident constitutes an allegation of a violation of Chancellor's Regulation A-830. If OEO and OSI determine that it is such an allegation, OEO will investigate the allegation in accordance with the procedures set forth in Chancellor's Regulation A-830.
- C. If OEO and OSI determine that the incident does not constitute an allegation of a violation of A-830, OEO will refer the complaint to OSI for investigation.
- D. The principal/designee must also report allegations of verbal abuse involving discriminatory language in OORS.

* Principals must immediately contact the Office of the Special Commissioner of Investigation (SCI) if there is reasonable suspicion to believe that the verbal abuse may be sexual in nature. The principal must also immediately inform OSI that this action was taken.

- If the supervisor who receives a report of verbal abuse is not the principal or site supervisor and the alleged verbal abuse occurs on or around school premises, the supervisor must notify the principal or site supervisor.

VII. PARENTAL NOTIFICATION

If a complaint has been filed by someone other than the parent, the principal must notify the parent/guardian that a complaint has been filed, and inform the parent that he/she will be provided with a determination after appropriate investigation.

VIII. INVESTIGATIONS

A. After OSI reviews the online report of verbal abuse submitted by a school or complaint submitted by a parent, OSI will advise the principal whether he/she is to conduct the investigation him/herself, or whether OSI will conduct the investigation. Principals shall take no action (other than contacting the police, if appropriate, as provided under Chancellor's Regulation A-412) to investigate a complaint prior to telephone or email communication with OSI.

1. If the principal is instructed to conduct the investigation, OSI will provide guidance and instruction at any stage of the inquiry, as needed.
2. When the principal conducts the investigation, in general, the following steps should be taken:

- Conduct individual interviews with and take written statements from all victims and witnesses as quickly as practicable;

Note: Interviews with student witnesses do not require parental consent.

- Separate the victims and witnesses prior to conducting interviews and taking such statements;

- The principal must immediately contact the NYPD and SCI, and stop the investigation if, during the course of investigating, there is reasonable suspicion to believe that physical abuse of a sexual nature has taken place.

- Meet with the accused employee;

- Prior to this meeting, the principal must provide the employee with written notice of the meeting and inform the employee of his/her right to appear with union representation. The meeting may be convened 48 hours after receipt of the written notice.

- At the meeting, if the accused employee wishes to review witness statements, he/she must sign an acknowledgment in the presence of union representation that he/she will not disclose the contents of the statements or retaliate against the author(s) of the statements. The union representative must also sign the acknowledgment. Copies of the acknowledgment must be provided to the accused employee and/or the union representative upon request. If the accused employee refuses to sign the acknowledgment, only statements from which all identifying information has been redacted shall be provided.

- Evaluate the evidence and the credibility of all witnesses, including the accused employee, before substantiating or unsubstantiating the complaint;

- Reach a conclusion and make a determination as to what disciplinary action, if any, is appropriate;

- Complete the Alleged Corporal Punishment and/or Verbal Abuse – Report of Investigation Form (see Attachment No. 1 for the A-420/A-421 Report Form);

- Fax the completed and signed A-420/A-421 Report to the Office of Special Investigations no later than five working days from the date on which the alleged incident was referred to the principal for investigation. In extenuating circumstances, extensions of this five-day period may be granted by OSI. Should such a situation arise, the principal or site supervisor must contact OSI to obtain the appropriate permission;
- Consult with OSI whenever technical or other assistance is needed;
- Maintain a file for each complaint.

3. If OSI is conducting the investigation, principals shall cooperate with its representatives in coordinating and organizing interviews, and accessing appropriate documents.

IX. PERSONNEL ACTIONS

- A. During the course of the investigation, the subject employee may be removed from assignments with students to safeguard the health, welfare, and safety of students, as well as the integrity of the investigation.
 1. At the time of communication with OSI regarding investigations, OSI will recommend whether the employee should be removed from his/her assignments pending further inquiry. In cases where OSI does not recommend removal, the principal may recommend removal, subject to review by the Integrated Service Center and legal staff in the Office of the General Counsel.
 2. When determining whether to remove the employee, the following should be considered: the prior record of the employee; the likely disciplinary action, should the allegations be substantiated; and any other relevant factors.
 3. An employee who has been removed from his or her assignment pending the outcome of an investigation shall be informed, in writing, of the nature of the investigation no later than five days from the date of his or her removal.
- B. The principal/site supervisor must take appropriate action against any staff member found to be in violation of this regulation.
- C. When an investigation, either by the principal or OSI, has determined that the accused staff member has not committed an act of verbal abuse or that the allegation of verbal abuse cannot be substantiated, the staff member must be so notified by the principal in writing. 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.

X. CONFIDENTIALITY

It is the Department of Education'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 by authorized parties (e.g., the OSI investigator, the principal, the principal's designee), to provide due process to the accused, and/or to take necessary action to resolve the complaint. School employees are prohibited from disclosing any information regarding the complaint to unauthorized parties, including the names of the accused employee(s), of student victim(s), and of witnesses.

XI. 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 charges. Such behavior must be reported immediately to the Office of the Special Commissioner of Investigation.

XII. REPORT TO NEW YORK STATE EDUCATION DEPARTMENT

The Regulation of the Commissioner §100.2(1)(3)(ii) requires a semi-annual report to the Commissioner by January 15th and July 15th of each year. The report must set 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. OSI will submit the required semi-annual reports to the Commissioner on behalf of the Department of Education by the required due dates.

XIII. 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

Fax:
718-935-3925/3927

OFFICE OF SPECIAL INVESTIGATIONS (OSI)
65 COURT STREET - ROOM 922
BROOKLYN, NY 11201
PHONE # 718-935-3800
FAX # 718-935-3925/3927

ALLEGED CORPORAL PUNISHMENT AND/OR VERBAL ABUSE
REPORT OF INVESTIGATION

Date of Report: _____ Confirmation Number: _____
(Obtained from Office of Special Investigations (OSI))

EMPLOYEE INFORMATION

Name: _____ File Number: _____

Position: _____ Social Security No.: _____

Home Address: _____

Date of Birth: _____ License(s): _____

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

Years of Service: _____

Tenured: _____ Prob: _____ CPT: _____ PPT: _____ Per Diem: _____

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:

STUDENT (COMPLAINANT/VICTIM) INFORMATION

Name: _____ Grade: _____ Age: _____

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.):

PARENT/GUARDIAN CONTACT INFORMATION

Name: _____

Address: _____

Home Telephone: _____

Business Telephone: _____

Date Parent/Guardian Notified of Incident: _____

School Staff Member Who Made Contact: _____

WITNESS INFORMATION

Name: _____ Position: _____

NOTE: If witnesses are students, on a separate sheet of paper, please list the students' names with the contact information for their parent(s)/guardian(s).

INCIDENT

If student and/or staff members made written statements, copies of the statements *must* be attached.

Date of Incident: _____ Time: _____

Location: _____

Description of Incident: _____

After initial review of the incident, I concluded the following:

ACTION TAKEN

For investigations not conducted by the Office of Special Investigations, the following must be completed. If necessary, additional information can be included on a separate sheet of paper and attached.

The allegations were not substantiated. The subject was so advised by letter dated: _____

OR

The allegations were substantiated.

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 used, disciplinary action must be taken.

TENURED STAFF

The subject is a tenured teacher tenured administrator

In the case of tenured teachers or tenured administrators, the punishment may include a verbal reprimand, letter of reprimand to file or charges under State Education Law §3020-a. If it has been determined that §3020-a charges might be warranted because of the serious or repetitive nature of the misconduct or other factors concerning the teacher's or administrator's performance, the Deputy Counsel, Administrative Trials Unit of the Office of Legal Services *must* be consulted (212-374-7600). Counsel should also be consulted if it is not clear what action may be appropriate.

The subject was verbally reprimanded on _____
Date _____

The subject received a letter to file, a copy of which is attached, on _____ Date

OR

The Office of Legal Services was consulted on _____ Date

Upon consultation, a letter to file, a copy of which is attached, was recommended.

Upon consultation, a Technical Assistance Conference was scheduled for _____ Date

Upon consultation, other action was recommended (explain on a separate sheet) _____ Date

NON-TENURED PEDAGOGUES AND OTHER STAFF

In the case of a substantiated allegation against a non-tenured pedagogue or other staff member, the Office of Appeals and Review (718-935-2991) *must* be consulted before any further action is taken.

The Office of Appeals and Review was contacted on _____ Date

Upon consultation, a letter to file, a copy of which is attached, was recommended.

Upon consultation, the staff member was terminated on _____ Date

Upon consultation, other action was recommended (explain on separate sheet and attach).

Report Preparer's Signature _____ Title _____

Date Prepared