



INFORMATION BULLETIN

SAFE SCHOOLS AGAINST VIOLENCE IN EDUCATION ACT An Overview and Advice to Local Leaders

On July 24, 2000 Governor Pataki signed into law the *Safe Schools Against Violence in Education Act (Project SAVE)*. This legislation culminates NYSUT's efforts over the past five years to improve school safety in response to the rise of violence in our schools. This legislation affords teachers and other school personnel greater opportunities to be involved in the development of school district policies and procedures concerning safe schools.

This Bulletin provides a summary of the major provisions of this legislation and related sections of Regulations of the Commissioner of Education. In addition, it provides advice for local leaders in working with school officials and members of their locals in developing and implementing policies and procedures associated with the Act. The legislation has a general effective date of November 1, 2000. For most provisions, school districts will have until July 2, 2001 to be in full compliance. It is extremely important that local NYSUT leaders and members are aware of the major provisions of the Act and its implications for teachers and other school personnel. Some of the provisions could have an impact on terms and conditions of employment.

Further questions concerning this information should be directed to your regional Labor Relation Specialist.

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Highlights of Project SAVE

- Penalties for assaults by any individual upon a teacher or school employee, or by any non-student upon a student are raised from a misdemeanor to a Class D felony.
- Teachers have the authority to remove disruptive students from the classroom pursuant to provisions of a locally adopted code of conduct. Students will not be able to return to the classroom until the principal makes a final determination about the case.
- Boards of education are required to adopt a detailed code of conduct to provide for the maintenance of order on school grounds. This code must be developed in collaboration with student, teacher, administrator and parent organizations.
- Boards of education are required to develop district-wide and building-level school safety plans that provide for crisis response and management.
- School district employees are given “whistleblower” protection (i.e., immunity from civil liability and protection against retaliatory actions by their employers), if they make a report about a suspected act of violence.
- Certified or licensed school personnel must report allegations of child abuse committed in an educational setting by school employees or volunteers.
- The State Education Department must develop interpersonal violence prevention education and training packages for grades K - 12.
- The Commissioner of Education is required to ensure that school conference days include school violence prevention and training. Teacher certification candidates will be required to complete two hours course work or training in school violence and prevention.
- The Board of Regents is directed to include a civility, citizenship and character education component in the course of instruction in grades K - 12.
- All prospective school district employees and all individuals who apply for certification will be fingerprinted for a criminal history background check.
- The State Education Department and the Department of Criminal Justice Services must develop a uniform violent incident reporting system. School districts will be required to furnish information on violent and disruptive incidents at schools and to report such incidents to local enforcement authorities.

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PLANNING REQUIREMENTS

School Safety Plans (Section 2801-a of Education Law and Section 155 of the Regulations)

Each board of education must adopt and amend a district-wide comprehensive school safety plan and building-level emergency response plan(s) regarding crisis intervention, emergency response and management. These plans include, but are not limited to, policies and procedures for responding to threats of violence, responding to acts of violence, safe evacuation during a violent incident, contacting law enforcement officials and parents during a violent incident, and protocol for responding to bomb threats, hostage-takings, intrusions and kidnappings.

Section 155.17 of the Regulations currently requires all school districts to have a School Emergency Management Plan. The Emergency Management Plan remains in effect until adoption of the district-wide and school building level plans by the board of education, consistent with the requirements of the Safe Schools legislation. These plans must be adopted by the school district's board of education by **July 1, 2001**. The legislation authorizes the Commissioner of Education to grant a waiver of the school safety plan requirements upon a finding by the Commissioner that the School Emergency Management Plan satisfies the requirements of the Safe Schools legislation. The waiver may be granted for a period of up to two years from July 24, 2000.

The district-wide and building-level emergency response school safety plans must be developed by district-wide and building-level school safety teams. Attachment II includes a chart describing the purpose and content of each plan, and the required membership of the team (including teacher representatives) charged with developing or implementing the plan.

The building-level school safety teams are responsible for developing a school emergency response plan. This plan includes safe evacuation policies and procedures to be utilized in the event of a "serious violent incident." Section 155 of the Regulations was recently amended to include a definition of this term.

A serious violent incident means an incident of violent criminal conduct that is, or appears to be, life threatening and warrants the evacuation of students and/or staff because of an imminent threat to their safety or health, including, but not limited to: riot, hostage-taking, kidnapping and or the use of threatened use of a firearm, explosive, bomb, incendiary device, chemical or biological weapon, knife or other dangerous instrument capable of causing death or serious injury (8 NYCRR 155).

A subsequent change to Section 155 of the Regulations does not require New York City to establish a unique emergency response team for each of its schools. Other changes affecting New York City are noted in Attachment I.

Each board of education must make the district-wide safety plan available for public comment at least 30 days prior to their adoption. However, only a summary of each building-level emergency response plan must be made available for public comment.¹ The plans may only be adopted following at least one public hearing that provides for the participation of school personnel, parents, students and any other interested parties.

Each school district must file a copy of its comprehensive safety plan and any amendments of such plan, with the Commissioner no later than thirty days after their adoption. A copy of the building-level emergency response plan and any amendments must be filed with the appropriate local law enforcement agency and with the state police within thirty days of their adoption.

Advice to Local Leaders

- *Local leaders should review the school district's existing School Emergency Response Plan with their Labor Relations Specialists to determine if the current plan is in substantial compliance with the law, or determine if a waiver should be discussed with their superintendent.*
- *If the current plan should be changed, local leaders should consider making a recommendation to the superintendent that the district proceed with revising the school safety plans, and place teacher representatives who are fully versed on the issues on the appropriate teams.*
- *Local leaders should assume the right and responsibility to make teacher appointments to the district and building teams.*
- *It may be appropriate to have teachers and other school personnel to serve on the building-level emergency response team. However, these individuals should not assume specific roles and responsibilities that are best handled by appropriately trained local or regional community agency personnel (for example, in the event a bomb threat has been made, teachers and other school personnel should not be assigned to search for a potential bomb.) In all instances, local leaders should be certain that such service on the emergency response team is voluntary.*
- *Some school employees, including teachers and paraprofessionals may also be licensed as an emergency medical services personnel. These individuals should not be expected to assume the responsibilities of community emergency response agencies. The scope of responsibility of these teachers/paraprofessionals should be limited to those associated with the occupational title an individual holds in the school district (i.e., teacher; teaching assistant).*

¹ The full building-level emergency response plans shall be confidential and shall not be subject to disclosure under the Public Officers Law.

DEALING WITH DISRUPTIVE STUDENTS

Codes of Conduct (Section 2801 of Education Law and Section 100.2 (l) of the Regulations)

Each school district and Board of Cooperative Educational Services (BOCES) must develop and adopt a detailed code of conduct by **July 1, 2001**, addressing specific areas for the maintenance of order on school property, including a school function.² The code will govern the conduct of students, teachers and other school personnel, as well as visitors. The code must also provide for its enforcement. According to Section 2801 of Education Law, the Board of Education must develop its code of conduct in collaboration with student, **teacher**, administrator and parent **organizations**, school safety and other personnel. Attachment I (page 21) includes the minimum components of a code of conduct.

Prior to the Board's adoption of the code, the Board must hold at least one public meeting to permit school personnel, parents and other interested individuals an opportunity to comment on the code. Each Board must annually review the code and update it, if necessary. In its review, the Board must consider the effectiveness of the code and the fairness and consistency of its administration. A school district may establish a committee to review the code and the district's response to it. The review committee must be composed of "similar individuals" to those on the initial committee (see paragraph one of this section). A public meeting must precede any adopted revision to the code. The code and any amendments must be filed with the State Education Department no later than thirty days after their adoption.

A plain language summary must be mailed to all parents prior to the beginning of the school year. In addition, copies of a summary of the code must be made available to all students at a general assembly held at the beginning of the school year. **Each teacher must receive a copy of the code in its entirety.**

Advice to Local Leaders

- *Under prior law and regulations, school districts were already required to develop, and maintain a code of conduct. It is anticipated that the existing code will be the basis of discussion concerning the new code. Local leaders should review this code of conduct with their respective Labor Relations Specialists and be prepared to advocate for any necessary changes.*
- *Local leaders and/or school personnel appointed by the collective bargaining unit should be involved in the initial development and review of the code. Local leaders should indicate to their superintendents the teachers who will participate in this process.*
- *Local leaders should be certain that the definitions and timeframes for discipline are clearly articulated in the code of conduct. The language of the code should retain a*

² School property means in or within any building structure, athletic playing field, playground, parking lot or land contained within the real property boundary line of the school district, or in a school bus. A school function means school sponsored extra-curricular event or activity.

teacher's ability to be flexible when administering discipline, while providing clear and defensible reasons so that the principal, parent, student and teacher understand that removal is permitted under the circumstances.

- *Local leaders should review proposed new code of conduct provisions with their respective Labor Relations Specialist for any conflicts with bargaining rights over terms and conditions of employment.*
- *Local leaders should advocate for maintaining the initial development team during the first year the code is implemented. This team could be responsible for monitoring its effectiveness, resolving implementation issues, recommending changes to the Board and suggesting procedures to ensure the successful implementation of the code.*
- *Local leaders should be certain the Code of Conduct includes clearly defined enforcement procedures to ensure that all components of the code are consistently, fairly and appropriately implemented to ensure Building Principals do not indiscriminately override the teacher's legal authority to remove a disruptive student from the classroom.*
- *Local leaders should be aware that the New York State School Boards Association (NYSSBA), in cooperation with the New York State Council of School Superintendents and the School Administrators Association of New York State, has developed a Sample Code of Conduct in response to the SAVE legislation. NYSSBA will be distributing this sample to members about the middle of January. The sample will also be available on their web site (www.nyssba.org).*

Regional staff and local leaders should be aware that this document is available to their districts and, in all likelihood, will be heavily relied upon by districts in developing their code of conduct.

While we were given an opportunity to review a draft and provided some input for the final version there remain some areas of concern. For example:

- *The definition of disruptive behavior and the penalties for specific conduct may not be sufficiently precise for some locals.*
- *There is a concern about the language which would require a teacher to obtain assurance (approval) from the principal that removal of a disabled student would not violate the student's IEP before the student is removed. The statute does not require this step, nor does IDEA.*

We believe that it is important to remind all staff and local leaders that this is not a "model" code. We strongly recommend that it simply not be adopted wholesale, but used instead as a beginning point for discussion and negotiation.

Teacher Removal of Disruptive Students (Section 3214 of Education Law)

NYSUT was successful in achieving the legal right of teachers to remove “disruptive” students from their classrooms consistent with the discipline measures contained in the code of conduct and state and federal laws and regulations.³ This right affords teachers clear authorization to remove students from their classrooms when the **teacher determines** that the behavior of certain students substantially impedes the educational process or interferes with the teacher’s classroom authority. This legislation does not inhibit teachers from using various behavior management strategies, techniques and interventions to deal with the behavior of students that may not warrant removal from the classroom.

Definition:

A disruptive pupil is an elementary or secondary student under 21 years of age who is substantially disruptive of the educational process or substantially interferes with the teacher’s authority over the classroom (Section 3214).

A teacher’s decision to remove a disruptive student may not be overturned by a principal unless:

- ◆ The charges are not supported by substantial evidence;
- ◆ The conduct is severe enough to warrant suspension from school and a suspension is imposed; or
- ◆ The student’s removal is in violation of law.

The statute and regulation do not define the term “substantially disruptive.” A suggested guideline is that a student could be considered substantially disruptive if the student continues to impede the teaching and learning process or interferes with the teacher’s authority over the classroom, following the teacher’s attempt to modify the student’s behavior (depending upon the severity of the behavior a teacher could remove a student without attempting to implement a behavior management strategy).

Teachers may remove students with disabilities from their classes for violating the school district’s code of conduct, which must ensure compliance with state and Federal laws relating to these students. (See the section on **Students with Disabilities**.)

Continued Educational Program is Required - According to Section 3214 of Education Law, school districts are required to make available continued educational programming and activities for students who are removed from their classrooms. This programming must be made available as soon as the student is removed from class. Although this term is not defined in legislation, NYSUT considers this term to mean that the school district must afford the student access to instruction that allows the student to continue to progress in the curriculum from which the student was removed. It is NYSUT’s position that a certified teacher must provide this instruction.

³ Teachers cannot begin to remove students, consistent with the provisions of the Act, until a Code of Conduct is adopted by the Board of Education. The code may limit the maximum number of days a teacher can exclude a student from class.

Removal of a Disruptive Student From the Classroom

Teacher Responsibilities

Step 1: The teacher makes a judgement that the student's behavior is substantially disruptive according to the school district's code of conduct, (the behavior is disruptive of the educational process or interferes with the teacher's authority over the classroom), and decides upon a period of removal consistent with the code of conduct.

Step 2: The teacher informs the student and the school principal of the reasons for the removal. The notice to the principal (which NYSUT recommends be in writing) should provide the substantial evidence to document the need for removal and include the amount of time the student will be removed from the classroom, consistent with the disciplinary measures in the code.

- If the student's conduct **does not pose a "continuing danger or an ongoing threat of disruption to the academic process,"** the teacher, prior to the removal, explains to the student the basis for the removal and allows the student to explain his/her version of the events.
- If the student's conduct **poses a "continuing danger or an ongoing threat of disruption to the academic process,"** the teacher explains the basis for the removal and allows the student an informal opportunity to be heard within 24 hours (one school day) of the student's removal. **In either case, the teacher must notify the principal of the reasons for removal.**

Principal Responsibilities

Step 3: The Building Principal informs the student's parent of the removal from the classroom and reasons for such within 24 hours (one school day) of the student's removal. The notice must also inform the parents of their right to an informal hearing with the principal to discuss the reasons for the removal.

Step 4: If requested by the parent or student, the principal holds an informal hearing within 48 hours (two school days) of removal from the classroom. If the student denies the charges, the principal allows the student and parent to present the student's version of relevant events.

Step 5: The principal must make a final determination concerning the student's removal from the classroom for violating the code of conduct by the close of business of the third school day of the student's removal. (The principal's determination must be made following the informal hearing with the parent, if requested.)

Step 6: Unless suspension from school takes place, the student returns to the classroom following the principal's determination. *(The student could return to the classroom prior to the principal's determination, if the period of removal, consistent with the code of conduct, is less than the three-day timeframe allowed for the principal to make such determination, or in the case of a student with a disability, the principal determines that the removal is inconsistent with the student's IEP or behavioral intervention plan or constitutes a disciplinary change of placement.)*

The following are possible examples of disruptive behavior and consequent times for removal. Locally exacted code of conduct may limit a teacher's authority to take these measures.

Scenario I - A student refuses to stop talking to a classmate after being requested to do so by the teacher for the third time. Following the first warning, the students was moved

to another location in the classroom. Following the second warning, the teacher informed the student that the student would be asked to leave the classroom, if a further disturbance occurred. Following the third disruption to the lesson, the teacher verbally informs the student that he/she will not be allowed to return to the classroom for one day, which is consistent with the range of consequences included in the code of conduct.

Scenario II - A student ignores a teacher's initial verbal warning to stop talking to a classmate. Following a second verbal warning, the student calls the teacher a derogatory name. The teacher immediately requests the student to leave the classroom and report to the principal's office. Prior to the student leaving the classroom the teacher verbally informs the student that the student may not return to the classroom for two days, which is consistent with the range of consequences included in the code of conduct.

Scenario III - A student with a disability engages in antagonistic behavior with another student. (The student has not been previously removed from the classroom.) When the teacher verbally informs the student to immediately stop such behavior, the student approaches the teacher and threatens to physically touch the teacher. The teacher immediately requests the student to leave the room and verbally informs the student that a three-day classroom removal will be imposed for such behavior. (The teacher was previously informed that the student's IEP did not indicate that the student had behavior that impedes learning.)

Following each incident the teacher submits a written form, describing the evidence to substantiate the removal, to the principal within 24 hours (one school day). The teacher's evidence supporting the disruptive behavior should be objectively stated, provide appropriate and adequate information, and include steps the teacher took to address the behavior or a clear reason why no such steps were attempted.

Advice to Local Leaders

- *Local leaders should insist that the code contains clear and unambiguous descriptions of behavior that fit within the definition of disruptive and, therefore, warrant removal.*
- *Local leaders should insist that the code of conduct include either a specified time period of removal according to a list of disruptive behaviors or a range of consequences to consider for disruptive behaviors, and clear indication that the teacher has the authority to determine the consequences for the behavior requiring removal.*

- *Local leaders should insist that the planning committee develop written forms for the teacher to notify the principal of a disruptive student, and of removal of such student.*
- *Local leaders should insist that clearly defined procedure be established when a student is removed from the classroom:*
 - *Where will the student report following removal;*
 - *How will the student continue to receive educational programming?*
- *Local leaders should insist that the district's legal counsel review the code of conduct to insure that all legal requirements have been met, particularly regarding students with disabilities.*

Teacher Removal of Students with Disabilities from a Classroom

The 1997 Amendments to the IDEA include specific provisions regarding the discipline of students with disabilities. The purpose of these provisions is to expand the authority of school officials to protect the safety of all students and to maintain orderly school environments while ensuring the essential rights and protections for students with disabilities.

The discipline provisions included in the IDEA and Sections 3214 of Education Law and 201 of the Regulations of Commissioner of Education help school officials to proactively address a student's behavior in the individualized education program (IEP) development process and to respond appropriately when students with disabilities violate a school's code of conduct.

Students with disabilities are subject to a school district's discipline policies and procedures. However, there are a few situations in which general discipline policies may not apply to students with disabilities. These situations are when the school district's disciplinary policy:

- ◆ Deprives a student of his or her special education and related services;
- ◆ Constitutes a disciplinary change of placement of the IDEA; or
- ◆ Conflicts with a student's individualized education program or behavioral intervention plan.

Students with disabilities may be removed from a classroom by a teacher under the SAVE Legislation. However, each school district's code of conduct must include provisions ensuring that the code is in compliance with Federal and State laws relating to students with disabilities. It is critical that school districts fully inform teachers of these procedures as well as the behavior management strategies and/or intervention to address the student's behavior, if any, included in a student's IEP or Behavior Intervention Plan (BIP). Any special education student with a behavior that impedes his/her learning or the learning of others must have a BIP to address the behavior.

In light of this information, it appears that a teacher may remove a disruptive student with a disability from the classroom under the following scenarios, so long as the removal would not constitute a disciplinary change in placement.⁴

- ◆ A student with a disability **does not** have a behavior intervention plan or IEP that includes specific strategies to address a student’s behavior precipitating the removal.
- ◆ Where a student has a behavior intervention plan or IEP that address specific behaviors, the plan has been implemented consistently and in good faith, but the plan is not working (that is, the student engages in disruptive behavior even though prescribed behavior or management strategies are being implemented.)
- ◆ Where the student has an IEP or behavior intervention plan (BIP), but the disruptive behavior precipitating the removal is “new” and of a different character than the behavior addressed in the IEP/BIP.

In the first circumstance, the removal could result in an initiation of a plan to assess the behavior for the purpose of revising the student’s IEP or developing a behavior intervention plan. The latter two circumstances could result in review of the IEP or BIP in relation to the behavior.

Under the SAVE legislation, a key issue is whether removal from a classroom would constitute a disciplinary change in placement for a student with a disability. The United States Department of Education (USDOE) has defined a school day as “any day” including a partial day which students are in attendance at school for instructional purposes. Based upon this definition, a removal for a “partial day” counts as one full day of removal.

However, a removal of a student from a classroom by a teacher in accordance with Section 3214 (3-a) would not constitute a removal and potentially trigger “disciplinary change in placement” procedures as long as the continued educational programming meets certain USDOE standards:

- ◆ The student is afforded the opportunity to continue to appropriately progress in the general curriculum;
- ◆ The student continues to receive the services specified in his or her IEP and;
- ◆ The student continues to participate with nondisabled students to the extent they would have in their current placement.

If a school district fails to meet these standards, the provisions of Section 201 of the Regulations of the Commissioner of Education apply.

⁴ Disciplinary change in placement means a suspension or removal from a student’s current educational placement that is either: (1) for more than 10 consecutive school days; or (2) for a period of 10 consecutive days or less if the student is subjected to a series of suspensions or removals that constitute a pattern because they cumulate more than 10 school days in a school year and because of such factors as the length of each suspension or removal, the total amount of time the student is removed and the proximity of the suspensions or removals to one another.

Advice to Local Leaders

- *Local leaders should insist that school districts implement federal and state special education requirements concerning the need to provide teachers with access to a student's IEP and BIP. These requirements also necessitate a school district to inform teachers of their responsibilities in implementing the IEP.*
- *Local leaders should insist that school districts provide all supports and services to the student and/or student's teacher as indicated in the IEP/BIP.*
- *Local leaders should insist that teachers are provided appropriate training on federal and state procedures concerning the disciplining of students with disabilities.*
- *Local leaders should insist that teachers participate in developing behavior intervention plans.*

Principal Suspension (Section 3214 of Education Law)

Project SAVE amended Section 3214 of Education Law to allow building principals to suspend for up to 5 school days a student who is insubordinate or disorderly or violent or disruptive or whose conduct otherwise endangers the safety, morals, health or welfare of others. Prior to this legislation, a principal could only suspend a student from school upon authorization by the Board of Education. Section 3214 also requires a teacher to immediately report and refer a violent pupil to the principal or superintendent for a violation of the code of conduct and a minimum suspension period. According to Section 3214 (2-a), a violent pupil is defined as follows:

A violent pupil is an elementary or secondary student under twenty-one years of age who:

- (a) commits an act of violence upon a teacher, administrator or other school employees;
- (a) commits, while on school district property, an act of violence upon another student or any other person lawfully upon said property;
- (b) possesses, while on school district property, a gun, knife, explosive or incendiary bomb, or other dangerous instrument capable of causing physical injury or death;
- (c) displays while on school district property, what appears to be a gun, knife, explosive or incendiary bomb or other dangerous instrument capable of causing death or physical injury;
- (d) threatens, while on school district property, to use any instrument that appears capable of causing physical injury or death;
- (e) knowingly and intentionally damages or destroys the personal property of a teacher, administrator, other school district employee or any person lawfully upon school district property; or
- (f) knowingly and intentionally damages or destroys school district property.

Suspension or removal for 5 school days or less by the building principal:

The following information describes the steps a principal follows when suspending a student for up to five school days.

Step 1: Student is charged with a violation of the code of conduct that will result in the suspension of a student for up to five days.

Step 2: The principal provides the parent and student with notice of the charged misconduct. If the student denies the misconduct, the principal must provide an explanation of the basis for the suspension.

Step 3: The student and parent, upon request, are given an opportunity for an informal conference with the principal at which the student or parent are given an opportunity to present the student's version of the event and to ask questions of the complaining witnesses.⁵

Step 4: School authorities must arrange for the student to receive alternative instruction (if the student is compulsory school age).

- ◆ Minimum one hour of alternate instruction per day for elementary students;
- ◆ Minimum two hours of alternate instruction per day for secondary students.

EDUCATION AND TRAINING

Character Education (Section 801-a of Education Law)

By July 1, 2001, the Board of Regents is required to ensure that K-12 curricula includes a component on civility, citizenship and character education. The Regents are directed to determine how to incorporate into the existing curricula the principles of honesty, tolerance, personal responsibility, respect for others, observance of laws and rules, courtesy, dignity and other positive traits which would enhance the quality of student' experience in, and contributions to the community.

⁵ The notice and opportunity for an informal conference must take place prior to suspension of the student unless the student's presence in the school passes a continuing danger to persons or property or an ongoing threat of disruption to the academic process. In such cases the notice and informal conference must take place as soon after the suspension as is reasonably practicable.

Advice to Local Leaders

- *Local leaders should request social studies teachers to review Standard Five of the social studies learning standards and the district's curriculum in relation to the above requirement. Standard Five states that students "will use a variety of intellectual skills to demonstrate their understanding of the necessity for establishing governments; the governmental system of the US and other nations; the US Constitution; the basic civic values of American constitutional democracy; and the roles, rights and responsibilities of citizenship, including avenues of participation." The social studies curriculum of the district may currently address the intent of this requirement.*

Health Curriculum Changes to Prevent Interpersonal Violence (Section 804 of Education Law)

The State Education Department must make available an interpersonal violence prevention package for grades K-12 consisting of student pamphlets, parent pamphlets, video tapes and other informative materials to be distributed to school districts and shall encourage the use of the material as part of the health or other related curricula.

The law further directs the Board of Regents to review the existing health curricula requirements for the purpose of streamlining the curriculum and identifying any outdated components that may be eliminated or consolidated to ensure that students have sufficient time and instruction to develop skills to address issues of violence prevention and mental health. (At this time, the Board of Regents has not developed any regulations or disseminated any curricular changes that may address this area.)

School Violence Prevention Training (Section 3004 of Education Law and Sections 57 and 100.2 of the Regulations)

New training requirements may affect teachers in two ways:

First, Section 100.2 of the Regulations was amended to implement a provision of Project SAVE requiring school districts and BOCES to include annual training in school violence prevention and intervention in their required professional development plans for teachers and other certified or licensed employees. This provision is effective November 1, 2000. Upon request of the employee who successfully completes this training course the school district or BOCES must provide the employee with a certificate of completion of the two-hour training.

Second, Section 57 of the Regulations was amended to require all persons applying on or after **February 2, 2001** for a teaching certificate or license, to complete two hours of course work or training in school violence prevention and intervention. The course work or training must be obtained from an institution or provider approved by the Department. A college or university that offers a registered program leading to a teaching, school service, or administrative certificate is deemed an approved provider for purposes of offering course work or training in school violence prevention and intervention to students enrolled in the registered programs.

The course work and training to be provided under the Sections 100.2 and 57 of the Regulations must include, but not be limited to:

- ◆ Study in the warning signs within a developmental and social context that relate to violence and other troubling behaviors in children.
- ◆ The statutes, regulations and policies relating to a safe nonviolent school climate.
- ◆ Effective classroom management techniques and other academic supports that promote a nonviolent school climate and enhance learning.
- ◆ The integration of social and problem solving, skill development for students within the regular curriculum.
- ◆ Intervention techniques designed to address a school violence situation.
- ◆ How to participate in an effective school/community referral process for students exhibiting violent behavior.

Advice to Local Leaders

- *Local leaders are advised to ensure that all training in school violence prevention and intervention provided during superintendent's conference days is reviewed by the Professional Development Planning committee which is comprised of a majority of teachers appointed by the collective bargaining agent.*

PREVENTION, PROTECTIONS, PENALTIES

Fingerprinting of Staff (Section 305 of Education Law)

Effective July 1, 2001, this legislation requires all prospective employees of school districts, other than in the New York City School System⁶, charter schools and boards of cooperative educational services to undergo fingerprinting and criminal background checks. The term employee means any of the following individuals who provide services involving **direct student contact**:

- ◆ Any person receiving compensation from a school district; or
- ◆ Employee of a contracted service provider; or
- ◆ Worker placed within the school under a public assistance employment program pursuant to Title 9-B of Article 5 of the Social Services Law.

The law does exempt the following individuals from the fingerprinting requirement:

⁶ Currently, provisions of the Executive Law authorizes New York City to fingerprint applicants for employment in New York City Schools.

- ◆ Current employees (however, if a current employee who has not been fingerprinted leaves a job with one district and seeks to be employed by another district, the employee must be fingerprinted by the second district.)
- ◆ Any prospective employee who was fingerprinted in order to receive a teaching certificate and whose fingerprints remain on file with the Division of Criminal Justice Services (“DCJS”).
- ◆ Any prospective employees fingerprinted pursuant to Vehicle and Traffic Law §§ 509-cc or 1229-d (i.e., bus drivers and school bus attendants).
- ◆ Any prospective employee previously fingerprinted and cleared by SED for employment.

School districts, BOCES and charter schools are also required to notify the Commissioner every time they hire someone or an employee leaves their district (i.e., through discharge or resignation). This notification must include the name of the employee and the position the employee holds currently or held prior to leaving the district.

Child Abuse Reporting and Prohibiting Silent Resignations (Article 23-B of Education Law)

This provision requires all certified or licensed school personnel to immediately report allegations of child abuse committed in an educational setting⁷ by school employees or volunteers to school authorities, who then must notify parents and law enforcement agencies. School personnel include teachers, school nurses, school guidance counselors, school psychologist, school social workers, school administrators, school board members or other school personnel required to hold a teaching or administrative license or certificate. Willful failure to report is a crime (Class A Misdemeanor), and reporters are immune from civil liability. District must provide training.

This provision also prohibits the practice of “silent resignations” where school authorities allow a person to resign in exchange for not disclosing allegations of child abuse. If a Superintendent permits an employee to resign under these circumstances, it will be considered a Class E Felony.

Relationship to Current Social Service Law Regarding Child Abuse Reporting

Article 23-B of Education Law deals specifically with reporting allegations of child abuse committed in educational settings. Children may be subject to abuse or maltreatment in other settings as well. Article 23-B does not change the requirements of school officials to make a report to child protective services when they have reasonable cause to suspect a student is abused

⁷ Educational setting shall mean the building and grounds of a public school district, the vehicles provided by the school district for the transportation of students to and from school buildings, field trips, co-curricular and extra-curricular activity sites and any other location where direct contact between an employee or volunteer and a child has allegedly occurred.

or maltreated. For many years Section 413 of the Social Services Law has required mandated reporters, including school officials to report when they have reasonable cause to suspect a **parent or guardian** is responsible for **causing injury, abuse or maltreatment** of that child.

Although the law does not specifically define the term school official, based upon a 1995 court decision involving a teacher it is advisable for teachers to involve the school principal and nurse so that the decision to report is not unilateral, particularly where the potential for further inquiry exists.

Current Social Service Law also states that, in addition to those persons legally required to report suspected child abuse or maltreatment, any person who has reasonable cause to suspect child abuse or maltreatment **may** make such a report (Social Service Law § 414).

The Educational Law requires that school districts develop, maintain and disseminate written policies and procedures on reporting child abuse, pursuant to the Social Services Law and the Family Court act. In addition, every district must establish and maintain a training program for all current and new school employees regarding these policies and procedures.

Whistle Blower Protection for Employees Reporting Acts of Violence (Section 3028-c of Education Law)

Effective November, 2000, school employees who have reasonable cause to suspect that a person has committed an act of violence in or on school property or upon a student, or that a person has brought a gun, knife, bomb or other dangerous instrument on school grounds will have immunity from civil liability for reporting these suspicions in good faith to school officials, to the Commissioner of Education, or to law enforcement officials. The employee will also be protected from retaliatory action by the school district or other school employees.

Advice to Local Leaders

- *Local leaders should urge school officials to issue guidance information to school employees on procedures and key terms associated with this provision of the Act. Key terms include “reasonable cause” and “good faith”.*

Expanding Teacher Discipline (Section 305 of Education Law)

This amendment effective November 1, 2000, expands the penalties the Commissioner is authorized to impose in Part 83 proceedings brought against individuals holding teacher certificates. Currently, the Commissioner can deny an application, suspend or remove a certificate. This amendment allows for suspension of the certificate for a fixed period of time or a limited period of time until a teacher completes a course of retraining or until the teacher successfully completes a course of therapy or treatment. The Commissioner can also revoke an extension to a certificate, impose a fine not to exceed \$5,000, or require completion of a course of continuing education.

Felony Assaults (Section 120 of the Penal Law)

Effective November 1, 2000, an assault by any individual upon a school employee on school grounds or by any non-student upon a students on school grounds, previously a misdemeanor is now a Class D Felony.

REPORTING REQUIREMENTS

Uniform Violent Incident Reporting (Section 2802 of Education Law)

By July 1, 2001, the Commissioner of Education in conjunction with the Division of Criminal Justice Services must develop a statewide system of reporting violent incidents which occur on school grounds. Although the State Education Department currently requires some limited information to be reported by school districts through the Basic Educational Data Systems (BEDS), this law takes a far more comprehensive approach to reporting violent incidents.

School districts and BOCES will be required to annually report to the State Education Department the following information concerning violent and disruptive incidents that occurred during the prior school year. A summary of this information will be included in the school district or BOCES report card.

Minimum Annual Reporting Requirements

1. The type of offenders;
2. If any offender is a student, the age and grade of the student;
3. The location at which the incident occurred;
4. The type of incident;
5. Whether the incident occurred during or outside of regular school hours;
6. Where the incident involves a weapon, whether the weapon was a firearm, knife or other weapon;
7. The actions taken by the school in response to the incident, including when the incident was reported to law enforcement officials and whether disciplinary action was taken against the offenders;
8. Any student discipline or referral action taken against a student/offender, including, but not limited to an out-of-school suspension, an involuntary transfer to an alternative placement, an in-school suspension, a referral for community service, referral for counseling, or a referral to the juvenile justice system, and the duration of such action; and
9. The nature of the victim and the victim's age and grade where appropriate.

This legislation also requires the State Education Department to report to the Governor and Legislature the prevalence of violent and disruptive incidents in the public schools and the effectiveness of school programs to reduce violence and assure the safety of students and school personnel. This report must identify specific schools with the least and greatest incidence of violent and disruptive incidents, and those that made the least and most improvement.

Advice to Local Leaders

- *Local leaders should be particularly aware of these reporting requirements on the school district or BOCES report cards. This could become a major media event in some school districts.*
- *Local leaders should be proactive in recommending programs and strategies to improve the school districts/BOCES violence measures including changes in the code of conduct.*

Reporting Sentences to Schools (Sections 380, 720 of Criminal Procedure Law; Section 301, 353 and 380 of the Family Court Act)

Family and criminal courts are required to provide notification of students criminal convictions involving jail time, and juvenile delinquency adjudication involving confinement, to school districts where a student enrolls. Each school district is required to designate an educational official who will receive the records and will coordinate the student's participation in programs that may exist in the school district or in the community, including non-violent conflict resolution programs, peer mediation programs, and youth courts, extended day programs and other school violence prevention and intervention programs. The law does not require the schools to develop the programs.

The information received by the district is confidential and must be kept separate from the student's permanent school records and must not be appended to or included in any documentation regarding this student and must be destroyed at such time the student is no longer enrolled in the school district. The legislation appears to prohibit one school district from forwarding this notification to a new school district should the student transfer. The information can only be used for purposes related to the execution of the student's educational plan, where applicable, to ensure successful school adjustment and reentry to the community.

Advice to Local Leaders

- *Local presidents should work closely with their school district to ensure that appropriate information about the student's abilities and learning and behavioral problems are accessible to all teachers who will be involved with the student.*

Plans for Enrolling Juvenile Delinquents in Educational or Vocation Programs upon Release from Placement in Youth Detention Facility. (Sections 353 and 355 of Family Court Act, Section 112 of Education Law and Section 100.2 of the Regulations)

This legislation changes the time for filing of reports at the conclusion of placement of a youth by the Family Court and expands the scope of the reports. The reports will include a plan for the release or conditional release of the youth to the custody of his/her parent(s), to independent living or to another permanent alternative. If the youth is within the age for compulsory education or chooses to participate in an educational program leading to a high school diploma, the plan must also include the steps that the placement agency has taken and will be taking to facilitate the enrollment of the youth in a school or educational program. If the

youth is beyond the age of compulsory education and chooses not to pursue an educational program, the plan must include the steps that the placement agency has taken and will be taking to assist the youth to become gainfully employed or enrolled in a vocational program following release.

This section will also require family court judges, in considering the completion or extension of placement in a permanency hearing, to consider the steps the placement agency must take to implement the plan for release or conditional release of the juvenile, the adequacy of the plan and any modifications that should be made to the plan.

Section 100.2 of the Regulations was recently amended to implement a provision of this legislation. Boards of Education are required to ensure the prompt enrollment and admittance to attendance of youths released or conditionally released from residential facilities operated or under contract with the Office of Children and Family Services, the Office of Mental Health, the Office of Mental Retardation and Developmental Disabilities or a local department of social services. Section 100.2 also requires each school district to designate one or more employees or representatives to facilitate the prompt enrollment of such students, to receive the student records and to serve as a district contact person with residential facilities and state and local agencies. Boards of education are required to request the youth's educational records from the school the student attended while in the residential facility and to implement where applicable, the educational plan for the student's release or conditional release, as submitted to the Family Court.

Advice to Local Leaders

- *Local leaders should urge school districts to develop procedures to ensure timely notice to appropriate teachers of students returning to school as well as information about the student's learning and behavior needs.*

The Omnibus School Violence Prevention Grant Program (Section 2814 of Education Law)

This section of Education Law provides the mechanism for and standard under which the Commissioner may award grants under the Extended School Day/School Violence Prevention Program which is funded in the state budget. Programs eligible for funding include one or more of the following school safety and violence prevention programs consistent with the school district's school safety plans and extended day activities.

- safe corridors programs
- diversity programs
- collaborative school safety plans with law enforcement agencies or community based organizations
- metal detectors, intercom and other interschool communication devices
- other programs including comprehensive school-based intervention models.

Comprehensive school based intervention models must include provisions for the involvement of **teachers**, parents, and school administrators in the development and implementation of the program, a detailed statement identifying specific performance goals, a

time table for implementation and achievement of these goals and specific assessment methods which will be used to measure student and school progress.

Eligible funds for extended day activities must be for programs outside the regular school day where students can participate in extra curricula enrichment activities including athletics, academic enrichment, art, music, drama, academic tutoring, mentoring, community services and related programs that will increase student achievement and contribute to school violence prevention. The legislation requires that activities conducted outside the regular school day shall be offered collaboratively between not-for-profit educational organizations, community based organizations, other agencies approved by the Commissioner and public elementary or secondary schools, and where applicable, school districts.

Advice to Local Leaders

- *Local leaders should ensure that teachers appointed by the union, are involved in the development of any school violence prevention grant program.*
- *Local leaders should also ensure that unit members are involved, whenever appropriate, in the provision of extra curricular enrichment activities conducted outside the school day.*

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