



City of New York

OFFICE OF THE COMPTROLLER

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MANAGEMENT AUDIT

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Audit Report on the Department of Education's Efforts to Address Student-to-Student Harassment, Intimidation, and/or Bullying in Compliance with Chancellor's Regulation A-832

MJ12-073A

March 1, 2013

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March 1, 2013

Dear Residents of the City of New York:

My office has audited the Department of Education's (DOE) compliance with Chancellor's Regulation No. A832 (CR-A832). We audit City schools to ensure that they comply with the rules and regulations established by the Chancellor.

This audit concluded that DOE provides support to the City's schools in regards to addressing, investigating, and following up on complaints of student-to-student bias-related bullying, harassment, and/or intimidation. However, this support is not adequate to help ensure that those incidents are treated in a consistent manner among City schools. Additionally, DOE has not developed an effective means to enable it to identify all bias-related incidents that violate CR-A832 nor has it established sufficient controls to ensure that bias-related incidents are treated in a consistent manner among City schools. Therefore, there is no assurance that all reported complaints of student-to-student bias-related occurrences were appropriately recorded in DOE's behavioral infraction database (OORS) and subsequently addressed.

To address these weaknesses, the audit made five recommendations, including that DOE should: (1) modify OORS to allow it to comprehensively and effectively track and identify all bias-related incidents, including CR-A832 violations; (2) ensure that school principals understand what is required of them regarding CR-A832 violations and that they comply with those requirements; and (3) enhance its oversight of the school-reporting process and establish more effective controls to better ensure that bias-related incidents are entered in OORS.

The results of the audit have been discussed with DOE officials, and their comments have been considered in preparing this report. Their complete written response is attached to this report.

If you have any questions concerning this report, please email my Audit Bureau at audit@comptroller.nyc.gov.

Sincerely,


John C. Liu

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THE CITY OF NEW YORK OFFICE OF THE COMPTROLLER MANAGEMENT AUDIT

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AUDIT REPORT IN BRIEF

This audit determined whether New York City's public schools appropriately address, investigate, and resolve student complaints of bullying and harassment by other students in compliance with the Department of Education's (DOE) Chancellor's Regulation No. A832 (CR-A832).

New York City's DOE is the largest public school system in the United States. It provides primary and secondary education for more than one million students from pre-kindergarten through grade 12. DOE issued CR-A832¹ on September 3, 2008. The regulation sets forth DOE policy prohibiting any form of bias-related harassment, intimidation, and/or bullying committed by students against other students on account of actual or perceived race, color, creed, ethnicity, national origin, citizenship or immigration status, religion, gender, gender identity or expression, sexual orientation, or disability. CR-A832 establishes reporting procedures, investigation, follow-up action, and notification requirements for all New York City public schools.

DOE requires all schools to record all behavioral infractions, including bias-related incidents, in DOE's Online Occurrence Reporting System (OORS), which is the document of record for all reported events. OORS is used to record, track, and report on all behavioral incidents based on disciplinary actions Citywide each year. For the 2009-2010 School Year, DOE reported 8,298 bias-related incidents, representing nearly 6 percent of all behavioral incidents recorded for the school year. Not all of these reported bias-related incidents, however, were classified as CR-A832 violations.

Audit Findings and Conclusions

This audit concluded that DOE provides support to the City's schools in regards to addressing, investigating, and following up complaints of student-to-student bias-related bullying,

¹ In anticipation of amendments to NYS Education Law that took effect July 1, 2012, DOE updated CR-A832 (effective October 12, 2011) to include, among other things, bias-based acts committed by students against other students on account of weight.

harassment, and/or intimidation. However, this support did not adequately ensure that those incidents were treated in a consistent manner among City schools. Further, although OORS is accessed and used by all schools Citywide to report behavioral incidents, the database was not designed, and through at least the end of the 2011/2012 school year, had not been modified to make possible the identification of all incidents that fall under CR-A832. Therefore, for the period under review, reasonable assurance could not be obtained to ensure that the City's public schools consistently complied with CR-A832.

The audit found that the three surveyed schools complied with some of the key aspects of CR-A832. However, DOE has not developed an effective means to enable it to identify all bias-related incidents that violate CR-A832. Therefore, DOE could not adequately track reported incidents or complaints of student-to-student bias-related harassment that occur at its schools and could not quantify the total number of such incidents for a given school year. Additionally, DOE has not established sufficient controls to ensure that bias-related incidents are treated in a consistent manner among City schools. This is of concern due to the inherent risk that school principals could downplay the reporting of bias-related incidents that occur at their respective schools. Therefore, we could not be assured that all reported complaints of student-to-student bias-related occurrences were appropriately recorded in OORS and subsequently addressed.

Our review of 10 bias-related incidents recorded in OORS for two of the three schools we visited demonstrated that (1) the sampled reported incidents were recorded in the OORS database in a timely manner; (2) the sampled schools investigated and followed up on the sampled incidents; and (3) school officials contacted or attempted to contact parents of victims and/or accused students involved in the sampled incidents. However, schools did not provide the alleged victims (students) with a written report of the outcome of the investigation within 10 days of the sampled incidents being reported or the schools becoming aware of the incidents.

Audit Recommendations

To address these weaknesses, the audit made five recommendations, including that DOE should:

- Modify OORS to allow it to comprehensively and effectively track and identify all bias-related incidents, including CR-A832 violations.
- Ensure that school principals understand what is required of them regarding CR-A832 violations and that they comply with those requirements.
- Enhance its oversight of the school-reporting process and establish more effective controls to better ensure that bias-related incidents are entered in OORS. At a minimum, such oversight should include visits to a sample of schools (selected based on objectively designed criteria) to review their methods for collecting and recording incident-related data and conduct limited testing of supporting school records to ensure that incidents are categorized and reported appropriately.

DOE Response

DOE generally agreed with the audit's five recommendations, stating that most had already been implemented.

INTRODUCTION

Background

DOE is the largest public school system in the United States. It provides primary and secondary education for more than one million students from pre-kindergarten through grade 12.

The DOE Office of School and Youth Development (OSYD) is responsible for helping schools to create and maintain a safe, orderly, and supportive school environment. OSYD works with DOE Children First Clusters and Networks and schools to establish and implement integrated safety, discipline, and intervention policies and procedures. It also provides guidance and support for the Respect for All (RFA) initiative and related matters.

The RFA initiative—an anti-bias program designed to raise awareness and directly combat bullying and harassment in New York City’s public schools—was introduced in 2007. On September 3, 2008, DOE issued CR-A832, which strengthened and expanded the RFA initiative. The regulation sets forth DOE policy specifically prohibiting any form of bias-related harassment, intimidation, and/or bullying committed by students against other students on account of actual or perceived race, color, creed, ethnicity, national origin, citizenship or immigration status, religion, gender, gender identity or expression, sexual orientation, or disability.

CR-A832 establishes reporting procedures, investigation, follow-up action, and notification requirements for all New York City public schools related to incidents involving student-to-student, bias-related harassment, intimidation, and/or bullying. It requires schools to make standards clear to students and staff, track and monitor all bias incidents, investigate complaints promptly, and take follow-up steps to ensure that the offending behavior has ceased.

DOE requires all schools to record all behavioral infractions, including bias-related incidents, in OORS, which is the document of record for all reported events. OORS is used by the schools and OSYD to record, track, follow-up, and report on all behavioral incidents Citywide each year, based on assigned disciplinary action codes (or classifications).

According to CR-A832, school officials are supposed to take a number of key steps once they receive a complaint or otherwise become aware of a bias-related incident. These steps include: (1) obtaining statements from the victim, the alleged perpetrator, and witnesses of the incident; (2) notifying the parents or guardians of the victim and of the alleged perpetrator; and (3) providing the results of the investigation to the victims within 10 days of the incident being reported. The initial complaint must be recorded in OORS within 24 hours of notification. In addition, all related information regarding the investigation and follow-up action should be recorded in OORS and updated appropriately. School principals/administrators are ultimately responsible for determining whether to enter and how to classify the incident in OORS.

Not all bias-related events are classified as CR-A832 violations. In determining whether an alleged bias-related incident or complaint constitutes a violation of CR-A832, among other factors such as the frequency, severity, nature, and duration of the behavior, and the ages and number of the parties involved, the offending behavior must (1) substantially interfere with a student’s ability to participate in or benefit from an educational program, school-based activity, or any other aspect of a student’s education and/or (2) create a hostile, offensive, or intimidating school environment or otherwise adversely affect a student’s educational opportunities.

For the 2009-2010 School Year, DOE reported 8,298 bias-related incidents, representing nearly 6 percent of all behavioral incidents recorded for the school year. Not all of these reported bias-related incidents, however, were classified as CR-A832 violations.

Objective

To determine whether the City's public schools appropriately address, investigate, and resolve student complaints of bullying and harassment by other students in compliance with CR-A832.

Scope and Methodology Statement

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives except for the lack of sufficient appropriate evidence to determine the population of incidents that violated CR-A832. This restricted our objective as noted below. This audit was conducted in accordance with the audit responsibilities of the City Comptroller as set forth in Chapter 5, §93, of the New York City Charter.

DOE was unable to provide the entire population of student-to-student, bias-related incidents involving harassment, intimidation, or bullying that violated CR-A832 for the period under review. DOE provided a population of bias-related incidents; however, CR-A832 violations could not be assessed from this data. Further, because OORS is the document of record for reported behavioral infractions and hard-copy reports are not consistently maintained or required, we could not test the data to be reasonably assured of its completeness. Consequently, we limited our tests to reviewing and ascertaining the adequacy of the controls that DOE and the schools established for addressing CR-A832 to ensure compliance.

The scope of this audit initially covered School Year 2010-11 (September 2010 – June 2011). It was later expanded to include School Year 2009-10 (September 2009 – June 2010) in order to assess the most recent data collected and reported by DOE on bias-related incidents that DOE had available at the initiation of audit fieldwork. Please refer to the Detailed Scope and Methodology section at the end of this report for the specific procedures and tests that were conducted.

Discussion of Audit Results

The matters covered in this report were discussed with DOE officials during and at the conclusion of this audit. A preliminary draft report was sent to DOE officials on September 17, 2012, and discussed at an exit conference held on October 3, 2012. We submitted a draft report to DOE officials on November 7, 2012, with a request for comments. On November 21, 2012, we received a written response from DOE, in which it generally agreed with all five of the audit's recommendations.

We are pleased that DOE generally agreed with the audit's five recommendations and stated that it has taken action to address the weaknesses cited herein. However, we are concerned that in its rather lengthy response, DOE argues with many of the audit's findings and attempts to undermine others by trying to confuse the primary focus of the audit. For example, DOE elaborated extensively about its requirements under the New York State Dignity for All Students Act. This audit did not set out to assess DOE's compliance with that statute. Rather, it focused

on City schools' compliance with CR-A832, which establishes different requirements than the Dignity Act.

Additionally, DOE attempted to detract from the limitations found with OORS by splitting hairs about the function and purpose of the database. Despite DOE's position, the fact remains that OORS is used by the schools and OSYD to record, track, follow-up, and report on all behavioral incidents Citywide each year.

Further, DOE sets forth its own version of sections of the report in an attempt to discount the impact of control weaknesses that were found in the schools' overall compliance with CR-A832 and DOE Central's oversight of the schools. For example, DOE stated:

"We do not believe that the Comptroller's limited audit findings at three schools out of over 1,700 are fairly reflective of the scope or effectiveness of the Department's web of guidance, support, internal controls and oversight around CR A-832 implementation specifically, or around incident reporting, investigation and follow-up on Discipline Code infractions more generally. That work, all of which was described by Department officials during the course of the audit with supporting data and documentation, is described in the attached response to the findings and recommendations."

We do not agree with DOE's assessment. We initially visited three schools as part of our survey. However, we did not expand our sample of schools because of the variances found existing between schools, the limitations of OORS, and the fact that DOE was unable to provide the entire population of CR-A832 violating incidents (Citywide and by school) for the audit scope period. Increasing the sample size would have had no impact on these findings.

Finally, DOE included information in its response that it failed to share during the audit. For example, DOE stated:

"The Report also suggests that OSYD and other Department officials do not routinely visit schools. That is not true. OSYD Central officials, Borough Safety Directors, and Network Youth Development Directors are all regularly in schools to provide training and support, as well as perform basic monitoring. And at the level of greatest depth, OSYD conducts on-site formal comprehensive assessment at approximately 15 to 20 school buildings, which often house multiple schools, per year. That assessment process is implemented by a team of at least seven officials who use a formal assessment tool and follow a standard protocol that includes an in-depth examination of OORS data for each school and specifically addresses compliance with CR A-832."

During the audit, we met with various DOE officials and asked them to discuss with us the oversight controls they have in place to ensure schools' overall compliance with CR A-832 and to ensure that incidents are appropriately recorded in OORS. Little of the information that DOE officials shared with us during the audit mirrors the assertions they make in their response. For example, OSYD officials told us of their abilities to analyze data and run various reports from OORS for any given period of time. However, the same officials also stated that the reports and analysis were done more on an ad hoc rather than regular basis. With regard to actual school visits and assessments, we recognize that City schools are subject to monitoring visits spurred by various reasons, i.e. Quality Reviews, reviews by the Office of Auditor General, etc. However, despite our frequent inquiries, DOE officials did not share any information during the audit specific about oversight visits and assessments pertaining to CR-A832 compliance and related matters as they elaborate in the response.

The full text of DOE's response is included as an addendum to this report

FINDINGS AND RECOMMENDATIONS

DOE has worked toward raising awareness and combating bias-based behavior among students through its RFA initiative and implementing CR-A832. Concerning the regulation, DOE provides support to the City's schools in regards to addressing, investigating, and following up on complaints of student-to-student bias-related bullying, harassment, and/or intimidation. However, this support is not adequate to help ensure that those incidents are treated in a consistent manner among City schools. Further, although OORS is accessed and used by all schools Citywide to report behavioral incidents, the database was not designed and, up through at least the end of the 2011/2012 school year, had not been modified to make possible the identification of all incidents that fall under CR-A832. Therefore, reasonable assurance could not be obtained to ensure that for the audit scope period the City's public schools consistently complied with CR-A832.

We found that the three surveyed schools complied with some of the key aspects of CR-A832. Specifically, we found that the schools had submitted an annual plan that contained required information. Each principal had designated at least one RFA liaison, who had received RFA training. Further, to raise student and staff awareness of CR-A832 and DOE's policy against bias-related harassment and bullying, each school visibly posted and utilized RFA literature and participated in RFA program events (i.e., RFA week).

However, at least through the end of the 2011/2012 school year, DOE had not developed an effective means to enable it to identify all bias-related incidents that violate CR-A832. The audit found that OORS did not allow for the classification of CR-A832 violations and the grouping and analysis of such data. Therefore, DOE could not adequately track reported incidents or complaints of student-to-student bias-related harassment that occur at its schools and could not quantify the total number of such incidents for a given school year. Additionally, DOE did not have sufficient controls in place to ensure that bias-related incidents are treated in a consistent manner among City schools. Consequently, we found variances with individual schools' administration and procedures related to CR-A32 complaints. This is of concern due to the inherent risk that school principals could downplay the reporting of bias-related incidents that occur at their respective schools. Accordingly, we could not be assured that all reported complaints of student-to-student bias-related occurrences were appropriately recorded in OORS and subsequently addressed.

Our review of 10 bias-related incidents recorded in OORS for two of the three schools we visited demonstrated that the incidents were recorded in the OORS database within 24 hours of the complaints being reported. Our review provided some assurance that the sampled schools investigated and followed up on the sampled incidents by suspending students accused of biased-related harassment when deemed necessary. Further, school officials contacted or attempted to contact parents of victims and/or accused students involved in the sampled incidents. However, schools did not provide the alleged victims (students) with a written report of the outcome of the investigation within 10 days of the sampled incidents being reported or the schools becoming aware of the incidents as established by the regulation. These matters are discussed in greater detail below.

Unable to Identify Full Population of Bias-Related Incidents That Fall Under CR-A832

For the period under review through at least the end of the 2011/2012 school year, DOE did not have effective means to identify its entire population of reported bias-related, harassment,

intimidation, and/or bullying incidents deemed to violate CR-A832. Consequently, DOE was unable to identify or generate a complete dataset of CR-A832 violations. Without the ability to track CR-A832 violations, neither we nor DOE were able to properly assess overall compliance with the regulation among the City’s schools. As stated previously, DOE uses OORS to record and consequently track all behavioral infractions throughout the City’s schools, including bias-related incidents. It is also used as part of DOE’s safety reporting system and is supposed to allow reviewers—primarily principals and OSYD personnel—to spot trends in such incidents and take appropriate action to address them.

When a reported incident is recorded in OORS, the principal or his/her designee will enter the names of the victim(s), the alleged perpetrator(s), and witnesses, if any, along with the incident date, OORS entry date, Principal notification date, date submitted, and date closed in designated (programmed) data fields. The person will also indicate (select) the appropriate infraction level and section of the “*Citywide Standards of Intervention and Discipline Measures*” (the Discipline Code) that has been violated. Further, a detailed narrative describing the reported incident should be included in the “Description Page” of OORS.

Beginning in school year 2008-2009, DOE reported on bias-related infractions of the Discipline Code. Specifically, for the 2008-2009 and 2009-2010 school years, DOE compiled and posted the OORS “*Report (Audit) of Bias-Related Harassment Incidents-Summary of Findings*,” which included all reported bias-related incidents, including CR-A832 violations. However, OORS had not been modified to specifically flag or identify CR-A832 incidents. Therefore, through at least the end of the 2011/2012 school year, DOE was not able to quantify the number of student-to-student, bias-related, harassment, intimidation, and/or bullying incidents that violate CR-A832.

For the 2009-2010 school year, DOE reported that of the 141,030 behavioral incidents recorded in OORS, there was a total of 8,298 bias-related incidents or 5.88 percent of all behavioral incidents recorded during that school year. The summary of findings report includes different analyses reflecting the percentage breakdown of all incidences by school level (Elementary: Grades K-5 and Secondary: Grades 6-12), by bias category (e.g., gender, disability, race, ethnicity, etc.), and, as shown below, by Discipline Code infraction level.

Table 1
Percentage of Bias-Related Incidents by Discipline Code Infraction Level for All incidents at All Grade Levels*

Discipline Code Infraction Level	Percentage of All Incidents with At Least One Bias
Level 1 (Least Serious)	4.18%
Level 2	13.63%
Level 3	22.86%
Level 4	57.65%
Level 5 (Most Serious)	1.68%

* Source: DOE’s “OORS Audit of Bias-Related Harassment Incidents 2009-2010” report

With respect to the high rate of Level 4 incidents, in the findings summary report, DOE noted: “49% [of the 57.65% Level 4 incidents] relate to making sexually suggestive comments, innuendos, propositions or similar remarks or engaging in nonverbal or physical conduct of a sexual nature (e.g., touching, patting, pinching, or lewd or indecent public behavior). 23.34% relate to engaging in intimidating and bullying behavior.” Notwithstanding, of the 8,298 bias-related incidents reported in OORS for the 2009-10 school year, DOE was unable to ascertain

how many of these incidents were student-to-student, bias-related harassment, intimidation, and/or bullying incidents that violated CR-A832.

With respect to the number of bias-related incidents that DOE reported, officials stated that to identify and quantify such incidents, OSYD sorts the incidents recorded in OORS according to the Discipline Code infraction levels (Levels 1 through 5). Then a key word search of the comments field is performed to identify incidents where specific terms (slur words, epithets, and other bias-related terms) are used in describing the event. OSYD personnel will read through the narratives for each of the resulting incidents to determine those that are bias-related.

This method of data analysis may be the best that DOE can currently employ. However, it is subjective, labor-intensive, and prone to error, increasing the risk that the reported statistics are inaccurate and incomplete. In addition, this method does not make a distinction between student-to-student and student-to-school personnel events. For example, for the three schools surveyed in this audit, we reviewed all 40 bias-related incidents recorded in OORS for the 2009-2010 school year. Of the 40 incidents, 13 (33 percent) were student-to-adult altercations (student to school staff members) and 27 (67 percent) were student-to-student infractions. Without complete and accurate reporting of such incidents, DOE is unable to adequately assess whether schools are complying with CR-A832 requirements to address student-to-student, bias-related harassment, intimidation, and/or bullying at its schools. Consequently, DOE is unable to effectively spot trends and take appropriate action.

Dignity for All Students Act

The New York State Dignity for All Students Act (DASA) was signed into law on September 13, 2010, and took effect on July 1, 2012. DASA seeks to provide the State's public elementary and secondary school students with a safe and supportive environment free from discrimination, intimidation, taunting, harassment, and bullying on school property, a school bus, and/or at a school function. This legislation amended NY State Education Law by creating a new article (Article 2- "Dignity for All Students") and amending other sections of the law. Moreover, DASA makes schools responsible for collecting and reporting data regarding material incidents of discrimination and harassment on school grounds or at school-sponsored events.

During the audit, DOE officials told us that they were awaiting clarification from NYSED on the types of incidents that form "material incidents of discrimination" and are ready to modify OORS, if necessary, to comply with the new law. As of the end of audit fieldwork in late May 2012, we noted that DOE had not made any changes to the live OORS system used Citywide. At the exit conference, DOE officials stated that during July and August 2012, OORS had been modified to comply with DASA reporting requirements for future school years. However, because these events were outside the audit scope and there was no actual evidence (i.e., data) for future school years (i.e., total number of incidents for the 2012/2013 school year) available to test, we could not perform additional testing to address this assertion and verify whether CR-A832 incidents would be appropriately identified and reported.

Given the weaknesses with OORS noted herein, for future school years, DOE must ensure that OORS is modified to identify and report on bias-related harassment, intimidation, and/or bullying incidents, particularly those that violate CR-A832.

No Assurance That Bias-Related Complaints Are Consistently Recorded in OORS

DOE has not established adequate controls to ensure that bias-related incidents are treated in a consistent manner among City schools. Specifically, we found insufficient monitoring and follow-

up by DOE to ascertain whether schools satisfactorily comply with stated procedures. Based on our interviews with officials from the three schools we surveyed, we found variations from school to school in the procedures for handling, investigating, and documenting complaints of bias-related incidents. Consequently, there is a lack of assurance that all reported complaints are accurately and consistently recorded in OORS throughout the City schools. This is of concern due to the inherent risk that school principals could downplay the reporting of bias-related incidents that occur at their respective schools. Moreover, there is no assurance that all reported behavioral infractions are appropriately updated and tracked in OORS and subsequently included in DOE-reported statistics.

DOE Response: “We believe it is important to note that the auditors found no evidence during the course of their audit work of any deliberate reporting omissions to ‘downplay’ the occurrence of bias-related incidents. That said, the risk of deliberate failure to report is, indeed inherent. Even if the Department had the resources to assign a full-time monitor in each of its over 1,700 schools, the risk that an incident observed by or reported to a school official might not be recorded in OORS would still exist. However, the Report does not adequately represent the internal controls in place to mitigate such a risk.”

Auditor Comment: As discussed in the report, we found that certain controls that DOE had in effect did not effectively address or mitigate existing risk. For example, in its response, DOE elaborates on the RFA e-mail address for “concerned staff, students and/or families to report incidents and/or make complaints about a school’s handling of an incident or complaint.” However, we found that the complaints or incidents reported and received by OSYD through the RFA e-mail address are directed back to the schools themselves for investigation and follow-up, which ultimately undermines the control as an oversight mechanism able to mitigate risk. These matters and other related control weaknesses were disclosed in the audit report.

We found a lack of uniformity and consistency in what and when the surveyed schools recorded in OORS. For example, the RFA liaison at one school told us that he uses the 24-hour recording window to determine whether an incident actually occurred or not. If an allegation is investigated and determined to be unfounded, then no report of the complaint is entered in OORS. Therefore, the school, in effect, reports only those incidents that are found to have occurred. This leads to inconsistencies in the reporting system. It is DOE’s policy that all allegations be entered in OORS whether these allegations are eventually deemed founded or unfounded. DOE should ensure that this policy is consistently applied throughout the school system.

In addition, our review of a sample of bias-related incident reports in OORS for two of the three surveyed schools disclosed that the information entered is often incomplete. For every incident logged in OORS, school officials have the ability to update or revise reports as additional information is later received. However, the schools we visited did not consistently update the incident record in OORS to document additional actions taken to address each complaint.

For example, of the 27 student-to-student bias-related incidents (of the 40 total incidents for the three surveyed schools recorded in the 2009-2010 school year), 11 had the status of “Administrative Action Is Pending” in OORS, indicating that no updates were made to these records. These 11 cases did not have any information about the complaint resolution (unlike the 16 other cases). The RFA liaison at one school told us that she did not know how to update the incident report and that she had never been trained to do so. Schools are required to “submit” incident reports in OORS within 24 hours of being notified or otherwise made aware of an incident. To do so, the person(s) responsible for entering the incident in OORS must ensure that once he/she has completed entering all the necessary information, the “submit” function is

carried out. Although this problem was eventually identified by a Network representative and corrected by providing guidance to the school's RFA liaison, this deficiency resulted in OORS not being updated appropriately. At another school, the perception was that updating reports would reflect negatively on the school if incidents are constantly being edited. Therefore, the incidents were not appropriately updated.

As discussed later in this report, these inconsistencies demonstrate that DOE needs to do more to follow up to better ensure that the City schools consistently follow OORS procedures and CR-A832 provisions.

DOE Response: “[W]hen school-based and central Department officials see ‘Administrative Action Is Pending’ indicated in the OORS database, they recognize that they would generally need to look at the corresponding entry or entries in the SOHO database to obtain information about a disciplinary proceeding or response that would result in removal of a student from his or her regular educational program. While nothing prohibits a school official from including a note about the disciplinary action(s) resulting from a reported incident, it is not required. An OORS incident report must be updated with any relevant information or evidence about the facts of the incident itself, not with the result of any disciplinary proceeding nor whether there was a suspension. That is not required in OORS.”

Auditor Comment: Considering that DOE concurs that OORS is the document of record for all reported events and should be updated with information about an incident or complaint, it is, therefore, logical that OORS should be updated to reflect any additional facts and follow-up actions taken by schools to address reported incidents in accord with CR-A832. Therefore, if disciplinary action has been recorded in SOHO, OORS should be updated to indicate that such action has taken place. To merely state that ‘Administrative Action Is Pending’ and not update OORS would leave a void in vital information needed to assess whether schools are adequately addressing, investigating and resolving student complaints in compliance with CR-A832. Such a void can be easily resolved by school officials utilizing the tools already in place in OORS.

Recommendations

DOE should:

1. Modify OORS to allow it to comprehensively and effectively track and identify all bias-related incidents, including CR-A832 violations.

DOE Response: DOE agreed, stating: “This recommendation was implemented, effective July 1, 2012. . . . The significant modifications to OORS, that were completed for the start of the 2012-2013 school year will enable the Department to fully and accurately report material incidents to the New York State Education Department as required under the Dignity Act, will help schools track and address student-to-student bias-related incidents in a timely manner, and will facilitate the schools’ effective implementation of CR A-832.”

2. Create mechanisms that will adequately identify and track bias-related student-to-student incidents occurring at its schools so that it can spot trends in such incidents and take appropriate action to address them. This can be accomplished starting with a comprehensive review of its system and methods of flagging those incidents that rise to the level of CR-A832.

DOE Response: DOE agreed, stating: “This recommendation was implemented, effective July 1, 2012.”

3. Ensure that all schools enter in OORS all allegations of bias-related incidents, whether founded or unfounded, and that schools appropriately update each so that a full accounting of the resulting investigation, follow-up actions, and related notifications are appropriately documented and a matter of record.

DOE Response: DOE generally agreed, stating: “It is impossible to fully eliminate the ‘inherent risk’ of deliberate failure to report cited in the Report, even though the audit found no evidence of any deliberate failure to report. . . . With respect to updating incidents in OORS, the Department will continue to reinforce in its guidance and training materials the types of information, developed through a school’s investigation of an alleged incident that would require an update of the incident report in OORS, as well as the mechanics of updating an OORS entry.”

Auditor Comment: While we recognize that the inherent risk of underreporting cannot be eliminated, DOE can better manage and mitigate such risk by establishing effective controls to provide reasonable assurance that schools appropriately record all reported bias-related incidents in OORS as required by CR-A832.

Lack of Effective Oversight and Monitoring of Schools to Ensure Compliance

We found that DOE lacks sufficient oversight and monitoring of schools’ reporting of bias-related incidents to provide assurance of schools’ compliance with CR-A832. This lack of control increases the inherent risk that school principals could downplay the reporting of bias-related incidents that occur at their respective schools, which could mar a school’s overall performance.

DOE has given general instructions to school administrators about their responsibilities in reporting incidents that occur at their schools. However, it has not established adequate oversight and monitoring to determine whether those instructions are being followed on a consistent basis among the schools.

Comptroller’s Directive #1, “Principles of Internal Control,” states that a sound internal control system must be supported by ongoing monitoring of activities at various organizational levels in the course of normal operations. Such monitoring should be performed continually and be ingrained in an agency’s operations.

DOE provides guidance through its written regulations, discipline code, and memorandums to principals. DOE also provides ongoing OORS training and education to school administrators. However, officials from OSYD or any of the units with whom we met do not routinely visit schools or analyze the schools’ safety and disciplinary records to determine how well the schools comply with DOE’s guidelines and regulations. Thus, DOE is limited in its ability to determine whether the data entered in OORS is reliable and is consistently reported from school to school.

DOE Network leaders review the data reported by schools in their respective networks and are available to assist schools if a school administrator has a question. Additionally, OSYD is responsible for ensuring that incidents are accurately recorded in OORS. Further, DOE officials stated that school administrators are provided professional development workshops that address bias-related issues and training sessions for OORS.

However, DOE needs to be more proactive to ensure that principals understand what is required of them and that they comply with those requirements. Moreover, it needs to enhance its oversight of the school-reporting process and establish more effective controls to better ensure that bias-related incidents are entered in OORS and subsequently reported to the NYSED in accordance with those requirements. At a minimum, DOE should visit selected schools to review their methods for collecting and recording incident-related data and should conduct limited testing of supporting school records to ensure that incidents are categorized and reported in accordance with DOE regulations. Without adequate monitoring, the categorization and reporting of bias-related incidents that may violate CR-A832 will continue to be subject to each school principal's determination. Therefore, inconsistencies and omissions of reportable incidents will continue to occur.

Recommendations

DOE should:

4. Ensure that school principals understand what is required of them regarding CR-A832 violations and that they comply with those requirements.

DOE Response: DOE agreed, stating: "This recommendation has been and continues to be implemented. As described above, the Department has trained Network and school-based officials in policies and procedures relating to the RFA initiative and CR A-832 for each of the past four years. Moreover, in connection with the modifications to OORS that became operational in July 2012, described above, the Department provided intensive training on the OORS modifications, Dignity Act, and CR A-832 reporting requirements. The Department will continue to provide guidance, training and support with respect to CR A-832 requirements and facilitate Central and Network monitoring of such compliance."

5. Enhance its oversight of the school-reporting process and establish more effective controls to better ensure that bias-related incidents are entered in OORS. At a minimum, such oversight should include visits to a sample of schools (selected based on objectively designed criteria) to review their methods for collecting and recording incident-related data and conduct limited testing of supporting school records to ensure that incidents are categorized and reported appropriately.

DOE Response: DOE generally agreed, stating: "This recommendation continues to be implemented. As described above, it is impossible to fully eliminate the 'inherent risk' of deliberate failure to report cited in the Report, even though the audit found no evidence of any deliberate failure to report. However, we described the significant internal controls in place to minimize such risk. As described, those controls include thorough investigation of concerns raised via the RespectForAll email address, as well as on-site formal comprehensive assessments at approximately 15 to 20 schools per year by OSYD teams, which include a review of the schools' methods for collecting and reporting incident-related data. The Department will review its formal assessment tool and standardized protocols to assess whether this already robust control can be further enhanced."

Auditor Comments: Although DOE believes that, in design and practice, the RFA e-mail account serves as a key monitoring and oversight tool, we found weaknesses in this control. First, although intended for use in reporting bias-related incidents, as reported by DOE officials and observed in audit tests, the e-mail address is frequently used by parents, et al to communicate unrelated issues. Although not

initially included in the report, we sampled 12 of the 69 student-to-student complaints received by OSYD through the RFA e-mail address during school year 2011-2012, and found that three (25 percent) of the 12 sampled incidents were not recorded in OORS. Further, we found that the complaints of incidents reported and received by OSYD through the RFA e-mail address are ultimately directed back to the schools for investigation and follow-up. Based on these facts, we do not consider the RFA e-mail account to serve as an effective oversight control.

Surveyed Schools Complied with Some CR-A832 Requirements to Promote Awareness

We found that the three schools we visited complied with some key aspects of CR-A832. Specifically, we found that the schools had submitted an annual plan that contained required information. Each principal had designated at least one RFA liaison, who had received appropriate training. Further, to raise student and staff awareness of CR-A832 and DOE's policy against bias-related harassment and bullying, each school visibly posted and utilized RFA literature and participated in RFA program events (i.e., RFA week).

In addition, we noted that each school had submitted an annual Consolidated School and Youth Development Plan to OSYD. Each plan outlined the information and training the school plans to provide to students and staff on the regulation along with each school's plan for preventing and addressing bias-related harassment during the school year.

CR-A832 also requires that each school investigate complaints promptly and take follow-up steps to ensure that the offending behavior has ceased. Our review of 10 sampled, reported bias-related incidents appearing to violate CR-A832 (five for the sampled high school and five for the sampled middle school) demonstrated that those schools reported these incidents in the OORS database within 24 hours of the complaint being made. Further, our review provided some assurance that the surveyed schools investigated and followed up on the recorded complaints by suspending students accused of biased-related harassment when deemed necessary. Further, school officials contacted or attempted to contact parents of victims and/or accused students involved in bias-related incidents we reviewed.

However, we found that the schools did not provide the alleged victim (student) with a written report of the outcome of the investigation within 10 days of the bias-related incident being reported or the school becoming aware of the incident. CR-A832 states that "the school shall report the results of its investigation of each complaint filed under the procedure in writing to the alleged victim within ten days of the complaint subject to state and federal laws regarding student records privacy and consistent with the privacy rights of the alleged harasser."

Officials at the schools stated that because of privacy concerns, they did not issue such reports. Further, at the exit conference, DOE officials argued that, as per CR-A832, the schools do not provide written reports of the investigation results to the victim—or even report the allegation to the parents of the students involved—because of the potential for retaliation or other possible threats or harm that could be imposed on the student(s) named in the complaint. However, DOE provided no evidence to indicate that written reports were not provided to the alleged victims due to specific retaliation concerns and not merely due to the schools' failure to provide the reports as required. Moreover, we find DOE's position for these instances contradictory given the fact that we found that school officials contacted or attempted to contact parents of victims and/or accused students involved in these sampled incidents (discussed above).

We recognize that in certain situations there can be concerns regarding a student's safety and the possibility of retaliation or retribution, and CR-A832 establishes that it is up to the principal to decide on a case-by-case basis whether to share the results of a CR-A832 investigation. However, DOE needs to clearly spell out reporting requirements and allowed exceptions in the regulation.

Due to weaknesses discussed in this report and the resulting limits of our audit tests, there is no assurance that all bias-related incidents that violate CR-A832 are identified as such by the City's public schools and that they are handled appropriately in compliance with the regulation.

DETAILED SCOPE AND METHODOLOGY

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions, based on our audit objectives except for the lack of sufficient appropriate evidence to determine the population of incidents that violated CR-A832. This restricted our objective as noted below. This audit was conducted in accordance with the audit responsibilities of the City Comptroller as set forth in Chapter 5, §93, of the New York City Charter.

DOE was unable to provide the entire population of student-to-student, bias-related incidents involving harassment, intimidation, or bullying that violated CR-A832 for the period under review. DOE provided a population of bias-related incidents; however, CR-A832 violations could not be assessed from this data. Further, because OORS is the document of record for reported behavioral infractions and hard-copy reports or records are not consistently maintained or required, we could not test the data to be reasonably assured of its completeness. Consequently, we limited our tests to reviewing and ascertaining the adequacy of the controls that DOE and the schools established for addressing CR-A832 to ensure compliance.

The scope of this audit initially covered School Year 2010-11 (September 2010 – June 2011). It was later expanded to include School Year 2009-10 (September 2009 – June 2010) in order to assess the most recent data collected and reported by DOE on bias-related incidents that DOE had available at the initiation of audit fieldwork. To accomplish our objectives, we performed the audit procedures discussed below.

To familiarize ourselves with DOE's "Respect for All" (RFA) initiative, we reviewed related materials obtained from the DOE website and other sources. To understand the objectives, responsibilities, and regulations governing bias-related harassment and bullying in schools, we reviewed Chancellor's Regulation A-832 (CR-A832) "*Student-to-Student Bias-based Harassment, Intimidation, and/or Bullying*," issued September 3, 2008. This regulation was used as audit criteria. To supplement our understanding, we also reviewed DOE's Discipline Code. We also reviewed information related to the NYS Dignity for All Students Act, which took effect July 1, 2012. Further, we reviewed a previous audit report issued by our office² and noted findings and conditions in that audit that addressed matters relevant to this audit.

To ascertain and evaluate DOE's oversight efforts and controls to promote schools' compliance with CR-A832, we interviewed key officials from OSYD and the Office of School Support. We also met with officials from the DOE's Office of Special Investigation and Office of Compliance Services (OCS) to understand the monitoring activities in place to detect whether schools are appropriately recording reported incidents in OORS. We also obtained the compliance report for the 2010-11 school year.

To understand the procedures and practices in place at the various school levels (i.e., elementary, middle, and high school) and to assess schools' compliance with CR-A832, we judgmentally selected three schools to visit as part of our survey: a high school in Manhattan, a middle school in the Bronx, and an elementary school in Brooklyn. Between December 6 and 12, 2012, we visited these schools and interviewed various officials at each, including principals,

² Office of the New York City Comptroller, "Audit Report on the Department of Education's Reporting of Violent, Disruptive, and other Incidents at New York City Public High Schools" (#MG06-140A), issued September 19, 2007.

assistant principals, and RFA liaisons. We also observed the schools to determine whether RFA literature was appropriately posted. Further, we obtained and reviewed RFA-related materials and hand-outs given to the students and parents along with schedules for RFA-related events that were held at the schools.

We also obtained from DOE officials and reviewed the RFA portion of Consolidated School & Youth Development (CSYD) Plans for each of the three schools we surveyed for the 2010-2011 School Year. As the CSYD plans for each school are available in October (near the beginning of the school year), for this test alone, we also reviewed the plans for the three surveyed schools for School Year 2011-2012. We ascertained whether each school’s plan contained elements required by CR-832, including the schools’ proposals to prevent and address bias-related harassment and the name of the primary RFA designees to whom students can report incidents of bias-related harassment, intimidation, and/or bullying.

Because OORS did not have a mechanism to flag and identify CR-A832 violations and DOE could not identify the population of such violations, we obtained and reviewed data associated with the “OORS Report/Audit of Bias-Related Harassment Incidents Summary of Findings” for the 2009-10 school year. From this data, we evaluated all bias-related incident reports for the three surveyed schools for which, as shown in Table II, we identified a population of 40 bias-related incidents.

Table II

Distribution of 40 Bias-Related Incidents for Three Surveyed Schools
for the 2009-2010 School Year

Type	Total Incidents	Surveyed Elementary School	Surveyed Middle School	Surveyed High School
Student-to-Adult Incident	13	0	1	12
Student-to-Student Incident	27	2	15	10
Total	40	2	16	22

CR-A832 does not address student-to-adult (or student-to-school personnel) incidents. Therefore, 13 of the 40 incidents were excluded from testing. We reviewed the details of each of the 27 student-to-student, bias-related incidents and identified those that appeared to be potential CR-A832 violations based on the infraction level and the particulars of the incident detailed in the recorded description.

Subsequently, we selected five of the potential CR-A832 incidents for two (the surveyed high school and middle school) of the three schools for further testing. There were no incidents for the elementary school in Brooklyn that appeared to violate CR-A832 criteria. Subsequently, on March 29 and 30, 2012, we revisited the surveyed high school and middle school and attempted to obtain supporting documentation for 10 selected incidents (five from each school). Subsequently, for each of the five sampled incidents for each school, we determined whether the schools had:

- Recorded the incidents in OORS within 24 hours of being reported and appropriately updated each case as needed.
- Appropriately investigated the complaints.
- Contacted and met with the parents of all students (victim and alleged perpetrator) associated with the incidents.
- Provided written results of the investigation within 10 days.
- Followed up to ensure the behavior ceased.

Because of the limitations with OORS, DOE's inability to identify the population of CR-A832 violations Citywide and by school, and other weaknesses disclosed in this audit, we did not see the need to expand our sample of schools. Notwithstanding, we believe the results of our review provided sufficient evidence to demonstrate the disclosed weaknesses and conditions that must be addressed by DOE to ensure that the City's public schools consistently comply with CR-A832.



**Department of
Education**

Dennis M. Walcott
Chancellor

Kathleen Grimm
Deputy Chancellor

November 21, 2012

Ms. H. Tina Kim
Deputy Comptroller for Audits
New York City Office of the Comptroller
1 Centre Street, Room 1100
New York, NY 10007-2341

Re: Audit Report on the Department of Education's Efforts to Address Student-to-Student Harassment, Intimidation, and/or Bullying in Compliance with Chancellor's Regulation A-832 – MJ12-073A

Dear Ms. Kim:

This letter and the attached response to findings and recommendations will serve as the NYC Department of Education's (Department) formal response to the draft report (Report) by the New York City Office of the Comptroller (Comptroller) in its audit of the Department's efforts to address student-to-student bias-based harassment, intimidation, and/or bullying in compliance with Chancellor's Regulation (CR) A-832, to be included as an appendix to the Comptroller's final audit report.

The Department is committed to maintaining a safe and supportive educational environment for all students that is free from harassment, intimidation and/or bullying committed by students against other students on account of race, color, creed, ethnicity, national origin, citizenship/immigration status, religion, gender, gender identity, gender expression, sexual orientation, disability or weight.

Harassment, intimidation and bullying have long been prohibited under the NYC Public Schools Citywide Discipline Code, and schools have long been required to record all behavioral infractions, as well as any disciplinary response that results in a student being removed from his or her regular educational program, in the Department's central data systems designed for those purposes. In 2007, the Department launched its Respect for All (RFA) initiative, a program designed to raise awareness and combat bias-based bullying and harassment. In September 2008, to supplement the Discipline Code and to strengthen and expand the RFA initiative, the Department issued CR A-832, which explicitly set forth the Department's policy specifically prohibiting student-to-student bias-based harassment, intimidation and bullying, and established requirements around reporting procedures, investigation, follow-up action and notification.

Meanwhile, at the State level, the Dignity for All Students Act (Dignity Act) was introduced in the New York State Senate and Assembly in February 2009, shortly after the issuance of CR A-832, to amend the State Education Law to promote awareness of, and sensitivity to, problems of discrimination or

harassment including bullying, taunting or intimidation in schools, as well as to require school districts to address these matters in their codes of conduct, and to make schools responsible for collecting and reporting data regarding material incidents of discrimination and harassment based on a person's actual or perceived race, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender, or sex. The Dignity Act was passed by the Senate and Assembly in June 2010 and signed into law September 13, 2010, to go into effect July 1, 2012.

The New York State Board of Regents posted draft regulations regarding Dignity Act reporting requirements for public comment in Spring 2012 and issued final regulations on September 14, 2012.

Based on the Dignity Act and the draft regulations posted by the Board of Regents, the Department engaged in significant efforts to modify its citywide incident reporting data system, the Online Occurrence Reporting System (OORS), to ensure that the Department would be able to comply with the Dignity Act reporting requirements, as well as to facilitate compliance with and monitoring of CR A-832. The modifications to OORS were completed and operational as of July 2012.

It is very important for the public to understand the above timeline when reading the Comptroller's Report. The Report, in accordance with audit conventions, presents its findings in the present tense. However, the scope of the audit covered School Years 2009-2010 and 2010-2011, a period that overlaps with the introduction and passage of the Dignity Act and that predates the effective date of the Dignity Act and the issuance of draft and final regulations on reporting requirements. Of course, the audit period therefore also predates the Department's significant modifications to the OORS system to facilitate compliance with the Dignity Act reporting requirements, and correspondingly, with CR A-832, which itself was updated in October 2011 to align with the Dignity Act.

The Department acknowledges the Comptroller's finding that, through the end of the 2011-2012 school year, the Department's legacy incident reporting database, OORS, was not designed in a way that would facilitate specific identification of incidents that would fall under the purview of CR A-832, as distinguished from the underlying Discipline Code infraction.¹ Given the introduction of the Dignity Act five months after the issuance of CR A-832, the passage of the Act in June 2010, and the development by the Board of Regents of regulations to implement the Act's data collection and reporting requirements, which were not posted until Spring 2012, the Department faced the possibility of expending substantial public resources to modify its OORS data system for CR A-832 compliance monitoring and train school officials on those modifications, only to find shortly thereafter that it would have to expend additional public resources to re-modify the OORS data system for Dignity Act reporting and re-train school officials.

From the commencement of the Comptroller's audit work in November 2011, the Department informed the auditors that work had already begun to plan for modifications to the OORS system to

¹ Not all incidents of intimidation and/or bullying are bias-based, and not all bias-based incidents rise to the level of harassment, intimidation and/or bullying under CR A-832. In determining whether an alleged bias-based incident constitutes a violation of CR A-832, school principals and administrators must find that the behavior (1) is based on a student's actual or perceived race, color, creed, ethnicity, national origin, citizenship/immigration status, religion, gender, gender identity, gender expression, sexual orientation, disability or weight; and (2) substantially interferes with a student's ability to participate in or benefit from an educational program, school-based activity, or any other aspect of a student's education, or (3) creates a hostile, offensive, or intimidating school environment or (4) substantially interferes with a student's mental, emotional or physical well-being; or (5) otherwise adversely affect a student's educational opportunities. In making this determination, school officials should evaluate factors such as the ages and number of the students involved, the frequency and duration of the behavior, and the nature, severity and scope of the behavior.

ensure compliance with the Dignity Act, that such modifications were dependent on State regulations to be promulgated by the Board of Regents, that the Department had concluded it would be fiscally irresponsible to modify the pre-existing OORS system once for CR A-832 and then again for the Dignity Act, and that such modifications would be designed and implemented as soon as possible once the Department had a clear understanding of what would be required to meet the Dignity Act's data collection and reporting requirements, and to ensure that such modifications would be operational for the start of the 2012-2013 school year.

All of that having been said, the Department did, throughout the period covered by the audit, provide substantial guidance and support to schools with respect to their implementation of CR A-832, and engaged in significant data analysis and oversight with respect to incident reporting, whether bias-based or otherwise. Some of that work is acknowledged in the Comptroller's Report, but much of it is not. And we do not believe that the Comptroller's limited audit findings at three schools out of over 1,700 are fairly reflective of the scope or effectiveness of the Department's web of guidance, support, internal controls and oversight around CR A-832 implementation specifically, or around incident reporting, investigation and follow-up on Discipline Code infractions more generally. That work, all of which was described by Department officials during the course of the audit with supporting data and documentation, is described in the attached response to findings and recommendations.

We do thank the Comptroller for reporting that the Department provides support to its schools in regards to addressing, investigating, and following-up on complaints of student-to-student bias-related bullying, harassment and intimidation, and that the auditors review of bias-related incidents at three schools provided some assurances that those schools were reporting incidents timely, investigating and following up on complaints, holding students accountable for their behavior, referring students accused of bias-related harassment for counseling, and working to contact parents of victims or accused students as appropriate. And although the Report cites an inherent risk that principals might deliberately choose not to report bias-related incidents, a point we address in the attached response to findings and recommendations, we note that the auditors found no evidence of any such failure to report.

In conclusion, we reiterate that the Department's significant modifications to its incident reporting system prior to the start of the 2012-2013 school year, accompanied by training, guidance and support around the Dignity Act, the RFA initiative, and CR A-832, have already addressed the primary concerns cited in the Comptroller's Report; to wit, at least four of the Report's five recommendations have been wholly or predominantly implemented. (The fifth appears to ask the Department to ensure against even the possibility that a school official might fail to enter an allegation into our data system, which is not possible.) And the Department is fully prepared to meet all of the data collection and reporting requirements under the Dignity Act. We would also like to thank the Comptroller's audit team for their professionalism and courtesy throughout the course of the audit, and the Comptroller's Office for its attention to the important issue of student-to-student bias-based harassment, intimidation and bullying.

Sincerely,



Kathleen Grimm

AUDIT REPORT ON THE DEPARTMENT OF EDUCATION'S EFFORTS TO ADDRESS
STUDENT-TO-STUDENT HARASSMENT, INTIMIDATION OR BULLYING
IN COMPLIANCE WITH CHANCELLOR'S REGULATION A-832 (MJ12-073A)

This response to findings and recommendations, along with the cover letter of Deputy Chancellor Kathleen Grimm dated November 21, 2012, will serve as the NYC Department of Education's (Department) formal response to the draft report (Report) by the New York City Office of the Comptroller (Comptroller) in its audit of the Department's efforts to address student-to-student bias-based harassment, intimidation, and/or bullying in compliance with Chancellor's Regulation (CR) A-832, to be included as an appendix to the Comptroller's final audit report.

Background

Harassment, intimidation and bullying have long been prohibited under the NYC Public Schools Citywide Discipline Code, and schools have long been required to record all behavioral infractions, as well as any disciplinary response that results in a student being removed from his or her regular educational program, in the Department's central data systems designed for those purposes. The Discipline Code includes specific infraction codes that address slurs and bias-based harassment, intimidation and/or bullying.

The Department's Online Occurrence Reporting System (OORS) database is used to report incidents occurring in schools, including accidents and behavioral infractions. As noted in the Report, OORS is the document of record for all reported events, and incidents or complaints must be recorded in OORS within 24 hours of notice to school officials. Information about an incident or complaint obtained through a school investigation, including statements from victims, perpetrators and witnesses, should be updated in OORS. However, the Report is incorrect in its suggestion that OORS is the system of record that schools should be using to track, follow up and report on disciplinary action. While some school officials may record aspects of disciplinary actions in OORS, the Department's system of record for disciplinary responses that result in the removal of students from their regular educational program, which includes principal's suspensions, superintendent's suspensions, and teacher removals, is the Suspensions and Office of Hearings Online (SOHO) database. Together, these systems allow the Department to track, analyze and report on behavioral infractions and disciplinary actions citywide.

The Department's Office of Safety and Youth Development (OSYD), in support of its mission to help schools to create and maintain a safe, orderly and supportive school environment for students, works with Children First Networks and Clusters, as well as

directly with schools, to establish and implement integrated safety, discipline, and intervention policies and procedures. OSYD also works to promote respect for diversity through the Department's Respect for All (RFA) initiative.

The RFA initiative, launched in 2007, is a program that was designed to raise awareness and combat bias-based bullying and harassment in our schools. Through the RFA initiative, the Department provides its schools with training, best practices, and other supports and resources including sample lesson plans and curricula, to promote respect for diversity and engage students in meaningful lessons and/or other activities that focus on preventing bias-based harassment, intimidation and/or bullying. The RFA initiative also provides resources for students, families and school-based staff, including an RFA brochure distributed annually to all students and translated into nine languages that provides information about how to report incidents of bias-based harassment, intimidation, bullying and/or discriminatory behavior, protections for those who report such incidents, and a central email address, RespectForAll@schools.nyc.gov, to which any incidents, questions or concerns may be reported. The New York City Council has provided funding to support RFA training, and the Council, in collaboration with the United Federation of Teachers and the Council of Supervisors and Administrators, has actively supported the Department's annual Respect For All Week, during which schools highlight their ongoing work to prevent harassment and bullying and promote respect for diversity.

In September 2008, to supplement the Discipline Code and to strengthen and expand the RFA initiative, the Department issued CR A-832, which explicitly set forth the Department's policy specifically prohibiting student-to-student bias-based harassment, intimidation and bullying, and established requirements around reporting procedures, investigation, follow-up action and notification.

Meanwhile, at the State level, the Dignity for All Students Act (Dignity Act) was introduced in the New York State Senate and Assembly in February 2009, shortly after the issuance of CR A-832, to amend the State Education Law to promote awareness of and sensitivity to problems of discrimination, intimidation, taunting, harassment and bullying in schools, as well as to require school districts to address these matters in their codes of conduct, and to make schools responsible for collecting and reporting data regarding material incidents of discrimination and harassment. The Dignity Act was passed by the Senate and Assembly in June 2010 and signed into law September 13, 2010, to go into effect July 1, 2012. The New York State Board of Regents posted draft regulations regarding Dignity Act reporting requirements for public comment in Spring 2012 and issued final regulations on September 14, 2012.

Based on the Dignity Act and the draft regulations posted by the Board of Regents, the Department engaged in significant efforts to modify its citywide incident reporting data system, the Online Occurrence Reporting System (OORS), to ensure that the Department would be able to comply with the Dignity Act reporting requirements, as well as to facilitate compliance with and monitoring of CR A-832. The modifications to OORS were completed and operational as of July 2012.

Identifying, Tracking and Reporting of Bias-Related Incidents That Fall Under CR A-832

The Department acknowledges the Comptroller's finding that, through the end of the 2011-2012 school year, the Department's legacy incident reporting database, OORS, was not designed in a way that would facilitate specific identification of incidents that would constitute a violation of CR A-832, as distinguished from the underlying Discipline Code infraction.¹ Given the introduction of the Dignity Act five months after the issuance of CR A-832, the passage of the Act in June 2010, and the development by the Board of Regents of regulations to implement the Act's data collection and reporting requirements, which were not posted until Spring 2012, the Department faced the possibility of expending substantial public resources to modify its OORS data system for CR A-832 compliance monitoring and train school officials on those modifications, only to find shortly thereafter that it would have to expend additional public resources to re-modify the OORS data system for Dignity Act reporting and re-train school officials.

However, the Department did engage in significant work prior to the completion of modifications to OORS as of July 2012 to identify, analyze and report on bias-related incidents. For each year covered by the audit, the Department sorted incidents by infraction levels under the Discipline Code, identified potential bias-related incidents through rigorous reading of incident reports and key word searches, calculated and analyzed bias-related incidents citywide, and issued an OORS Report of Bias-Related Harassment Incidents – Summary Findings.²

¹ Not all incidents of intimidation and/or bullying are bias-based, and not all bias-based incidents rise to the level of harassment, intimidation and/or bullying under CR A-832. In determining whether an alleged bias-based incident constitutes a violation of CR A-832, school principals and administrators must find that the behavior (1) is based on a student's actual or perceived race, color, creed, ethnicity, national origin, citizenship/immigration status, religion, gender, gender identity, gender expression, sexual orientation, disability or weight; and (2) substantially interferes with a student's ability to participate in or benefit from an educational program, school-based activity, or any other aspect of a student's education, or (3) creates a hostile, offensive, or intimidating school environment or (4) substantially interferes with a student's mental, emotional or physical well-being; or (5) otherwise adversely affect a student's educational opportunities. In making this determination, school officials should evaluate factors such as the ages and number of the students involved, the frequency and duration of the behavior, and the nature, severity and scope of the behavior.

² This review was aimed at calculating and analyzing all bias-related incidents, whether or not they would constitute a violation of CR A-832. Accordingly, the incident numbers taken from the Department's reports and cited in the

The significant modifications to OORS that were completed for the start of the 2012-2013 school year will enable the Department to fully and accurately report material incidents to the New York State Education Department as required under the Dignity Act, will help schools track and address student-to-student bias-related incidents in a timely manner, and will facilitate schools' effective implementation of CR A-832.

Now, the entry of an infraction code in OORS related to use of slurs will trigger a drop down menu requiring the selection of one or more categories from among actual or perceived race, ethnicity, color, national origin, citizenship/immigration, status, weight, religion, creed, gender, gender identity, gender expression, sexual orientation, or disability.³ For infraction codes related to student-to-student behavior, the school staff member entering the report is required to respond "YES" or "NO" to a question asking if the incident involved behavior that may make it a bias-based incident of harassment, intimidation and/or bullying. If the response is "NO", this message appears: "If following your investigation, you have determined that the incident involved student-to-student bias-based harassment, intimidation and/or bullying, you **must update the incident to reflect these findings** and follow the procedures outlined in Chancellor's Regulation A-832." If the response is YES, this message appears: "Chancellor's Regulation A-832 **requires** that you investigate this incident and issue a written report of the results of your investigation within 10 school days. Upon completion of your investigation, you **must update** this incident report. **Click here** to see Chancellor's Regulation A-832." To complete the update of an incident, the school is required to check "YES" or "NO" to the statement: "*The behavior involved in this incident was found to be a violation of Chancellor's Regulation A-832.*" If the response is YES, the school must select from a drop down menu of all categories that apply to the incident including race, color, ethnicity/national origin, etc. If a school does not update the information from its investigation into the "Bias-Based Incident Investigation Queue," the incident will stay in the queue and the incident will be considered incomplete. The Bias-Based Incident Investigation Queue will be monitored. Follow-up emails will be sent as a reminder until the incident update is completed.

From the commencement of the Comptroller's audit work in November 2011, the Department informed the auditors that work had already begun to plan for modifications to the OORS system to ensure compliance with the Dignity Act, that such modifications were dependent on State regulations to be promulgated by the Board of Regents, that the Department had concluded it would be fiscally irresponsible to modify the pre-

Comptroller's Report are certainly much higher than the number of incidents that would constitute a violation of CR A-832.

³ Although the drop-down menu will be triggered by any reported use of slurs, only a slur directed at a student by another student would be reported under the Dignity Act as a material incident, and only student-to-student conduct would prompt a CR A-832 assessment.

existing OORS system once for CR A-832 and then again for the Dignity Act, and that such modifications would be designed and implemented as soon as possible once the Department had a clear understanding of what would be required to meet the Dignity Act's data collection and reporting requirements, and to ensure that such modifications would be operational for the start of the 2012-2013 school year. At the exit conference, Department officials confirmed that the modifications to OORS were complete and provided the auditors with information and supporting documentation relating to those modifications, including screen shots of the OORS modifications themselves. Department officials also provided information and supporting documentation on guidance and training provided to Clusters, Networks and schools on the modifications to OORS, on implementing Respect for All, and on complying with both the Dignity Act and CR A-832.

The Report acknowledges that Department officials informed the Comptroller during the audit that the Department was awaiting clarification on the types of incidents that would be deemed "material incidents of discrimination" for Dignity Act reporting, and informed the Comptroller at the exit conference that OORS had been modified as of July 2012 to comply with Dignity Act reporting requirements. However, the Report states that because these events were outside the audit period and there was not yet a data set for the 2012-2013 school year that could be tested, the Comptroller "could not perform additional testing to address the Department's assertion." That treatment in the Report is disappointing. Transaction level testing is not necessary to confirm the fact of the Department's execution and rollout of these modifications to the OORS system. The Department provided substantial evidence – not mere assertions - of those modifications and the training of the field in those modifications, and the Department offered the audit team a live demonstration of the new features. It is therefore disappointing, given the open communication throughout the course of the audit regarding the Department's acknowledged need to modify its OORS system upon its receipt of clear guidelines on Dignity Act reporting requirements, and the evidence provided in support of the Department's execution of such modifications, that the Comptroller elected to report in the present tense that "the Department has not developed an effective means to enable it to identify all bias-related incidents that violate CR-A832."

Assurance That Bias-Related Complaints Are Consistently Recorded in OORS

Aside from the capacity of the Department's OORS data system to specifically identify incidents that would fall under CR A-832, the Report raises concerns about the Department's internal controls to ensure consistency by school officials in their recording of bias-related incidents in OORS. In that context, the Report also cites an "inherent risk that school principals could downplay the reporting of bias-related

incidents that occur at their respective schools” and states that “there is no assurance that all reported behavioral infractions are appropriately updated and tracked in OORS.”

The “inherent risk” of deliberate non-reporting, a question essentially independent of the Comptroller’s audit findings relating to CR A-832, is discussed in our response to the Report’s findings on oversight and monitoring, below. We do agree that all allegations of bias-related incidents must be recorded in OORS, even where a school-based investigation concludes that the allegation was unfounded. There is no indication of deliberate malfeasance by the one school RFA liaison cited in the Report who told auditors he believed he could use the 24 hour window for OORS reporting to determine whether an alleged incident actually occurred. As soon as this was brought to the attention of the Department, the RFA liaison was re-trained in proper reporting procedures.

With respect to the updating of incidents in OORS, the Report appears to reflect a misunderstanding about the role and interplay of each of the Department’s two relevant databases. As discussed in the background section, above, the OORS database is used to report incidents occurring in schools, including accidents and behavioral infractions. OORS is the document of record for all reported events, and incidents or complaints must be recorded in OORS within 24 hours of notice to school officials. Information about an incident or complaint obtained through a school investigation, including statements from victims, perpetrators and witnesses, should be updated in OORS. However, the Report is incorrect in its suggestion that OORS is the system of record that schools should be using to track, follow up and report on disciplinary action. While some school officials may record aspects of disciplinary actions in OORS, the Department’s system of record for disciplinary responses that result in the removal of students from their regular educational program, which includes principal’s suspensions, superintendent’s suspensions, and teacher removals, is the SOHO database. Together, these systems allow the Department to track, analyze and report on behavioral infractions and disciplinary actions citywide.

Accordingly, when school-based and central Department officials see “Administrative Action Is Pending” indicated in the OORS database, they recognize that they would generally need to look at the corresponding entry or entries in the SOHO database to obtain information about a disciplinary proceeding or response that would result in removal of a student from his or her regular educational program. While nothing prohibits a school official from including a note about the disciplinary action(s) resulting from a reported incident, it is not required. An OORS incident report must be updated with any relevant information or evidence about the facts of the incident itself, not with

the result of any disciplinary proceeding nor whether there was a suspension. That is not required in OORS.

Guidance, Support, Internal Controls and Oversight

Throughout the period covered by the audit, the Department provided substantial guidance and support to schools with respect to their implementation of CR A-832, and engaged in significant data analysis and oversight with respect to incident reporting, whether bias-based or otherwise. Some of that work is acknowledged in the Comptroller's Report, but much of it is not. And we do not believe that the Comptroller's limited audit findings at three schools out of over 1,700 are fairly reflective of the scope or effectiveness of the Department's web of guidance, support, internal controls and oversight around CR A-832 implementation specifically, or around incident reporting, investigation and follow-up on Discipline Code infractions more generally. That work, all of which was described by Department officials during the course of the audit with supporting data and documentation, includes the following.

Each year for the last four years, OSYD provided all Network Youth Development Directors with specific training on the requirements of CR A-832, which included an in-depth review of best practices. Those Network Youth Development Directors train school-based officials, in turn. In each of the last three years, OSYD additionally provided all principals with a PowerPoint presentation to be used in the schools to meet the requirement for annual training of school-based staff under CR A-832. The PowerPoint presentation, which was shared with the auditors, addresses CR A-832 in depth, including staff responsibilities, reporting and investigation requirements. Each principal must certify as part of the school's Consolidated School and Youth Development Plan that staff training has been completed prior to October 31 of each school year. Additionally, the Consolidated School and Youth Development Plan's RFA section requires schools to identify all RFA Liaisons, certify that each has completed the mandated two-day training, and submit a yearly RFA plan that describes how the school will promote respect for diversity and address, prevent and intervene with respect to harassment and/or bullying during the course of the school year. Network Youth Development Directors review and provide feedback on each Plan before it is finalized, and Networks work with their schools to support the Plan.

With specific respect to the "inherent risk" of deliberate non-reporting of bias-related incidents cited in the Report, we believe it is important to note that the auditors found no evidence during the course of their audit work of any deliberate reporting omissions to "downplay" the occurrence of bias-related incidents. That said, the risk of deliberate failure to report is, indeed, inherent. Even if the Department had the resources to assign

a full-time monitor in each of its over 1,700 schools, the risk that an incident observed by or reported to a school official might not be recorded in OORS would still exist. However, the Report does not adequately represent the internal controls in place to mitigate such a risk.

The most important control against the risk of deliberate failure to report bias-related incidents is not even mentioned in the Report, which is the effective communication of a mechanism for concerned staff, students and/or families to report incidents and/or make complaints about a school's handling of an incident or complaint. CR A-832 requires schools to visibly display RFA posters, and RFA brochures are distributed in English and nine other languages for students to bring home to their families. The RFA brochures prominently advertise an email address, RespectForAll@schools.nyc.gov, which parents, students or school officials can use to request assistance or voice any concern about their school's handling of a bias-related incident or complaint. In design and in practice, the RFA email account serves as a key monitoring and oversight tool. Whenever an RFA email is received, a thorough investigation is conducted with both Central and Network staff involved to ensure that all relevant policies and procedures, including timely incident reporting in OORS, have been followed and that the incident or complaint has been appropriately investigated and resolved. Department officials provided the auditors with a copy of the RFA email database in which concerns reported via that email address are recorded and tracked through completion. If it is determined that school officials were aware of an incident or complaint and failed to record it in OORS, the Department may refer such conduct to its Office of Special Investigation for investigation. Where malfeasance is substantiated, the Department will pursue disciplinary action as appropriate.

Another internal control that mitigates the risk of deliberate failure to report is data monitoring and analysis by OSYD Central officials, Borough Safety Directors, and Network Youth Development Directors. As part of that monitoring, any red flags in the data, such as suspiciously low numbers of reported incidents in one or more infraction codes given school size, grade range and location, will be escalated for review and intervention, if needed. The Report also suggests that OSYD and other Department officials do not routinely visit schools. That is not true. OSYD Central officials, Borough Safety Directors and Network Youth Development Directors are all regularly in schools to provide training and support, as well as perform basic monitoring. And at the level of greatest depth, OSYD conducts on-site formal comprehensive assessments at approximately 15 to 20 school buildings, which often house multiple schools, per year. That assessment process is implemented by a team of at least seven officials who use a formal assessment tool and follow a standard protocol that includes an in-depth

examination of OORS data for each school and specifically addresses compliance with CR A-832.

Compliance With CR A-832 Requirements at Three Surveyed Schools

The Report found that the three schools visited by the auditors complied with many key aspects of CR A-832, including submission of their Consolidated School and Youth Development Plans with all of the required information, designation and training of RFA liaisons, visible posting of RFA materials, and participation in RFA program events. The Report further finds that all sampled reported bias-related incidents were reported timely, and that the schools investigated and followed-up on the reported complaints, and implemented disciplinary action or referred students for counseling where deemed appropriate.

The Report also noted that school officials contacted or attempted to contact parents of victims and/or accused students involved in bias-related incidents, but found that the schools did not provide the alleged victim with a written report of the outcome of the investigation within 10 days of the school's notice of the alleged incident. Officials at the two schools with sampled incidents indicated that they did not issue written reports due to privacy concerns.

CR A-832 expressly contemplates that privacy laws, privacy rights of the accused student, as well as subjective concerns for the privacy or safety of the alleged victim, may warrant omission of parent notification and/or the issuance of written reports. The regulation assigns to the principal/designee the responsibility to determine when notification of the parents of the alleged victim may be omitted. It is unclear from the Report whether the privacy concerns cited by the school officials related to privacy laws and the privacy rights of the accused student, or to the privacy and safety of the alleged victim. However, of the nine separate bias-related incidents cited by the Comptroller,⁴ four were explicitly related to bias based on actual or perceived sexual orientation. That is the type of case about which privacy and safety concerns are most paramount. The Comptroller notes that in their sampled cases, it appeared that school officials did contact or attempt to contact the parents of the victims and/or the accused students, but still did not issue reports. The Department will follow up with the schools, but at this point we do not know the level of detail conveyed in the initial outreach to the parents or the specific basis for non-issuance of written reports.

⁴ The report cites 10 incidents, but the list the auditors provided to the Department included two OORS entries relating to a single incident. Moreover, in our review of the incident reports for these 10 incidents, we identified no evidence of any bias-relation for three. If the incidents were not bias-related, they would not be subject to the provisions of CR A-832 relating to notification or the issuance of written reports.

Response to Recommendations

Recommendation 1: DOE should modify OORS to allow it to comprehensively and effectively track and identify all bias-related incidents, including CR-A832 violations.

This recommendation was implemented, effective July 1, 2012.

Recommendation 2: DOE should create mechanisms that will adequately identify and track bias-related student-to-student incidents occurring at its schools so that it can spot trends in such incidents and take appropriate action to address them. This can be accomplished starting with a comprehensive review of its system and methods of flagging those incidents that rise to the level of CR-A832.

This recommendation was implemented, effective July 1, 2012.

Recommendation 3: DOE should ensure that all schools enter in OORS all allegations of bias-related incidents, either founded or unfounded, and that schools appropriately update each so that a full accounting of the resulting investigation, follow-up actions, and related notifications are appropriately documented as a matter of record.

As described above, it is impossible to fully eliminate the “inherent risk” of deliberate failure to report cited in the Report, even though the audit found no evidence of any deliberate failure to report. However, we described the significant internal controls in place to minimize such risk. With respect to the one RFA liaison who believed that unfounded allegations do not have to be reported in OORS, the Department will continue to reinforce in its guidance and training materials that all allegations of bias-related incidents must be recorded in OORS. With respect to updating incidents in OORS, the Department will continue to reinforce in its guidance and training materials the types of information, developed through a school’s investigation of an alleged incident, that would require an update of the incident report in OORS, as well as the mechanics of updating an OORS entry. As discussed above, however, we do not expect schools to report student disciplinary proceedings or actions in OORS. Where a school pursues discipline against a student that involves the removal of a student from his or her regular educational program, the school must record information about the disciplinary proceeding and result in the SOHO system.

Recommendation 4: DOE should ensure that school principals understand what is required of them regarding CR-A832 and that they comply with those requirements.

This recommendation has been and continues to be implemented. As described above, the Department has trained Network and school-based officials in policies and procedures relating to the RFA initiative and CR A-832 for each of the past four years. Moreover, in connection with the modifications to OORS that became operational in July 2012, described above, the Department provided intensive training on the OORS modifications, Dignity Act, and CR A-832 reporting requirements. The Department will continue to provide guidance, training and support with respect to CR A-832 and the OORS modifications will both drive compliance with CR A-832 requirements and facilitate Central and Network monitoring of such compliance.

Recommendation 5: DOE should enhance its oversight of the school-reporting process and establish more effective controls to better ensure that bias-related incidents are entered in OORS. At a minimum, such oversight should include visits to a sample of schools (selected based on objectively designed criteria) to review their methods for collecting and recording incident-related data and conduct limited testing of supporting school records to ensure that incidents are categorized and reported accurately.

This recommendation continues to be implemented. As described above, it is impossible to fully eliminate the “inherent risk” of deliberate failure to report cited in the Report, even though the audit found no evidence of any deliberate failure to report. However, we described the significant internal controls in place to minimize such risk. As described, those controls include thorough investigation of concerns raised via the RespectForAll email address, as well as on-site formal comprehensive assessments at approximately 15 to 20 schools per year by OSYD teams, which include a review of the schools’ methods for collecting and reporting incident-related data. The Department will review its formal assessment tool and standardized protocols to assess whether this already robust control can be further enhanced.