

Category: STUDENTS

Issued: 7/19/13

Number: **A-421**

Subject: PUPIL BEHAVIOR AND DISCIPLINE – VERBAL ABUSE

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## SUMMARY OF CHANGES

This regulation updates and supersedes Chancellor's Regulation A-421 dated June 29, 2009. It defines and prohibits the verbal abuse of students and sets forth the reporting and investigative requirements for allegations of verbal abuse of students.

### Changes:

- Revises and clarifies definition of verbal abuse. Page 1, Section II.
- Revises and clarifies procedures for reporting verbal abuse. Page 2, Section IV.
- Sets forth new procedures for School-Based Investigations. Page 4, Section VI.C.
- Reorganizes and explains investigative steps. Pages 3-4, Section VI.
- Explains when student witness statements may be released to the accused employee. Page 4, Section VI.B.4
- Clarifies that employees who violate this Regulation may be subject to discipline or other follow-up action. Page 4, Section VII.
- Attachment No. 1 has been revised to reflect the changes to the Regulation.

### **ABSTRACT**

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

#### **I. POLICY**

- A. It is the policy of the Department of Education (“DOE”) to prohibit verbal abuse of students by DOE staff members, custodial employees, vendors, consultants, CBO staff and others on school property, school trips and other school functions, and off-school property when such off-school behavior disrupts or would foreseeably disrupt the educational process or endangers or would foreseeably endanger the health, safety, morals or welfare of the school community.
- B. Disruptive behavior by a student must never be punished by use of verbal abuse. Schools should address a student’s disruptive behavior through offering guidance intervention, working with parents, and addressing behavior in accordance with Chancellor’s Regulation A-443 and the DOE’s Discipline Code.
- C. Employees who violate this regulation will be subject to appropriate disciplinary action.

#### **II. DEFINITIONS**

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

#### **III. NOTIFICATION TO STAFF**

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

- A. review the importance of this Regulation with all staff, distribute a copy of this Regulation to every staff member at the beginning of the school year, and have every staff member sign an acknowledgment of its receipt at the beginning of each school year;

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<sup>1</sup> This Regulation does not govern corporal punishment. The procedures for reporting corporal punishment are set forth in Regulation A-420.

<sup>2</sup> Written language includes language that is transmitted electronically.

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

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

##### A. Staff Member Obligations

Any staff member who witnesses verbal abuse, who has knowledge or information about or who receives a report about a student who may be a victim of verbal abuse, is required to orally report the allegation to the principal/designee within one school day. Within two school days of making the oral report, the staff member also must:

1. submit a written report to the principal/designee by completing a witness statement found in the DOE's Online Occurrence Reporting System ("OORS") , or
2. file an online report directly with the Office of Special Investigations ("OSI") (see Section IV.B.2 below).

If the allegation of verbal abuse is against the principal, the staff member should make the report of verbal abuse directly to OSI using OSI's online reporting system (see Section VI.B.2 below).

##### B. Principal/Designee Obligations

The principal<sup>3</sup> or designee must report all allegations of verbal abuse of students by DOE employees, custodial employees, vendors, consultants, CBO staff and others to OSI within 24 hours of learning of the allegation by one of the following methods:

1. entering the information into the OORS; **or**
2. entering the information into OSI's online reporting system at [https://www.nycenet.edu/offices/osi/CPR\\_Form/form.aspx](https://www.nycenet.edu/offices/osi/CPR_Form/form.aspx) or calling (718) 935-3800.

If the principal/designee enters a report of alleged verbal abuse into OORS, he/she will automatically be routed to OSI's online reporting system. There is no need for the principal/designee to also report the complaint separately to OSI.

- C. Once a report of verbal abuse is received in OSI's online reporting system, that system will automatically generate a confirmation number ("OSI number"). The OSI number must be referenced in all subsequent communications regarding the reported incident.
- D. Parents and students may report a complaint of verbal abuse by notifying the principal/designee of the school their child attends, by notifying OSI directly through OSI's online reporting system, or by contacting OSI at (718) 935-3800.
- E. OSI is responsible for the intake, evaluation, review, follow-up, and dissemination of information to various offices within the DOE and to other appropriate entities with respect to allegations of verbal abuse. After making a report, the principal/designee shall take no further investigative action until OSI provides instructions as to how to proceed, other than contacting the police or the Office of the Special Commissioner of Investigation ("SCI") if appropriate.
- F. If a complaint has been filed by someone other than the parent of the alleged victim, the principal must notify the parent of the alleged victim that a complaint has been filed.
- G. Anonymous complaints may be filed by using the OSI online reporting system.

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<sup>3</sup> When used in this Regulation, the term principal also refers to site supervisors. The term site supervisors refers to the person acting in a supervisory capacity to the DOE employee alleged to have engaged in verbal abuse.

**V. REMOVAL OF EMPLOYEE DURING INVESTIGATION**

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

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

**VI. INVESTIGATION**

- A. Allegations of verbal abuse will be investigated either by OSI or by the school at which the incident occurred. After OSI receives a report of verbal abuse, OSI will inform the principal whether OSI will conduct the investigation or whether the principal must conduct a School-Based Investigation (“SBI”).
  1. All DOE employees are required to cooperate with investigations of verbal abuse, and are required to report if summoned to appear for an interview. If requested by OSI, principals must assist OSI by coordinating and organizing interviews of school staff, and by making requested documents available.
  2. If the principal is instructed to conduct a SBI, Senior Field Counsel will provide guidance and instruction to the principal. (See Section VI.C).
  3. If, during the course of an investigation, there is reasonable suspicion to believe that physical abuse of a sexual nature has taken place or that a crime has been committed, the New York City Police Department and the Special Commissioner of Investigation (“SCI”) must be contacted immediately, and the investigation must stop pending receipt of further direction.
- B. Whether the case is investigated by OSI or by the school, the following investigative steps must be taken:<sup>4</sup>
  1. Interview the alleged victims and student/staff witnesses separately, and obtain their written statements as quickly as practicable.<sup>5</sup>
  2. Provide the accused employee with 48 hour written notice of his/her right to appear with union representation at an investigative interview to discuss the allegation of verbal abuse. The 48 hour notice and notice of right to union representation is available at: <http://schools.nyc.gov/Offices/GeneralCounsel/Legal/SFC/default.htm>.
  3. The investigative interview may not be convened without union representation or prior to 48 hours after the employee’s receipt of the written notice unless the employee waives his or her right to 48 hour notice and/or union representation. In such a case, the employee must sign a waiver, available at <http://schools.nyc.gov/Offices/GeneralCounsel/Legal/SFC/default.htm>.
  4. Meet with the accused employee. At the meeting, the employee must be provided with a description of the allegation of verbal abuse and the opportunity to make a

<sup>4</sup> Detailed investigative steps can be found at <http://schools.nyc.gov/Offices/GeneralCounsel/Legal/SFC/default.htm>.

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

statement. If the accused employee requests an opportunity to review student witness statements, or adult witness statements that contain student-specific information, the employee must sign a privacy acknowledgment in the presence of union representation (where such representation is present) that he/she will not disclose the contents of the statements or retaliate against the author(s) of the statements. The union representative must also sign the privacy acknowledgment. The privacy acknowledgement is available at <http://schools.nyc.gov/Offices/GeneralCounsel/Legal/SFC/default.htm>. Copies of the acknowledgment must be provided to the accused employee and/or the union representative upon request. If the accused employee refuses to sign the privacy acknowledgement, all personally identifiable information pertaining to any student other than the victim, must be redacted from student victim's witness statement and adult witness statements before they are given to the accused employee. Student statements, other than the victim's statement, may not be provided to accused employees who have not signed the privacy acknowledgment. In these situations, the school must read the statement to the accused employee, making sure not to disclose any personally identifiable information about any student other than the victim that may be contained in the statement. Regardless of whether the privacy acknowledgement is signed, the accused employee may not retain copies of the witness statements provided for review during the investigation.

5. Evaluate the evidence and the credibility of all witnesses, including the alleged victim and the accused employee.
  6. Maintain a separate file for each complaint.
- C. For School-Based Investigations only:
1. Within 10 business days of receiving the complaint, the principal must determine whether the complaint is substantiated or not, and must complete the Alleged Corporal Punishment and/or Verbal Abuse – Report of Investigation Form, explaining the conclusions reached with respect to each allegation (see Attachment No. 1, Investigative Report Form). If additional time is required to complete the investigation due to extenuating circumstances, principals should consult with their assigned Senior Field Counsel.
  2. When a SBI is complete, principals must scan or fax the completed and signed Investigative Report, along with all interview notes, written statements, and investigative findings, to their assigned Senior Field Counsel. SBIs are considered closed only after the principal receives confirmation from Senior Field Counsel to this effect.
- D. At the conclusion of the investigation, the principal/designee must inform the parent of the alleged victim whether the allegations were substantiated or not substantiated.

## VII. PERSONNEL ACTIONS

- A. Once a principal receives confirmation from Senior Field Counsel that the investigation is complete, the principal/site supervisor must take appropriate disciplinary action and/or follow-up action with respect to any staff member found to be in violation of this Regulation. For assistance with disciplinary letters, principals should consult their Senior Field Counsel.
- B. When an investigation, either by the principal or OSI, is completed, the accused staff member must be informed of the results of the investigation. If the accused employee was reassigned during the pendency of the investigation and there is no other reason for reassignment, the employee must be returned to his or her regular assignment.
- C. An employee who violates this Regulation may be subject to discipline, which may include termination, or other appropriate follow-up action. Moreover, nothing in this Regulation prevents a principal from counseling or disciplining an employee for inappropriate conduct that does not constitute a violation of this Regulation.

**VIII. CONFIDENTIALITY**

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

**IX. TAMPERING/RETALIATION PROHIBITED**

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

**X. REPORT TO NEW YORK STATE EDUCATION DEPARTMENT**

A semi-annual report regarding verbal abuse complaints is made by OSI to the Commissioner of Education by January 15<sup>th</sup> and July 15<sup>th</sup> of each year. The report sets forth the substance of each complaint, the result of each investigation, and the action, if any, taken by the local school authorities in each case.

**XI. INQUIRIES**

Inquiries pertaining to this regulation should be addressed to:

*Office of Special Investigations*  
N.Y.C. Department of Education  
65 Court Street – Room 922-923  
Brooklyn, NY 11201

Telephone:

718-935-3800

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



OSI CASE # \_\_\_\_\_

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

**ALLEGED CORPORAL PUNISHMENT AND/OR VERBAL ABUSE**  
**REPORT OF INVESTIGATION**

Date of Report: \_\_\_\_\_ OSI Case Number: \_\_\_\_\_

**SUBJECT EMPLOYEE'S INFORMATION**

Name: \_\_\_\_\_ File Number: \_\_\_\_\_

Position: \_\_\_\_\_ Social Security No.: \_\_\_\_\_

Home Address: \_\_\_\_\_

Date of Birth: \_\_\_\_\_ License(s): \_\_\_\_\_

School: \_\_\_\_\_ District: \_\_\_\_\_ Boro: \_\_\_\_\_ Region: \_\_\_\_\_

Years of Service: \_\_\_\_\_

Tenured: \_\_\_\_\_ Prob: \_\_\_\_\_ CPT: \_\_\_\_\_ PPT: \_\_\_\_\_ Per Diem: \_\_\_\_\_

**EMPLOYEE HISTORY**

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

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

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OSI CASE # \_\_\_\_\_

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

Name: \_\_\_\_\_ Grade: \_\_\_\_\_ Age: \_\_\_\_\_

Date of Birth: \_\_\_\_\_

Has student made prior allegations?

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

Yes

No

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Narrative of student performance (conduct, etc.):

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**PARENT/GUARDIAN CONTACT INFORMATION**

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Home Telephone: \_\_\_\_\_

Business Telephone: \_\_\_\_\_

Email address: \_\_\_\_\_

Date Parent/Guardian Notified of Incident: \_\_\_\_\_

School Staff Member Who Notified Parent: \_\_\_\_\_



OSI CASE # \_\_\_\_\_

**STAFF/STUDENTS INTERVIEWED**

Name: \_\_\_\_\_ Position/Grade: \_\_\_\_\_

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

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**INCIDENT**

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

Date of Incident: \_\_\_\_\_ Time: \_\_\_\_\_

Location: \_\_\_\_\_

Description of alleged incident: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

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

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**ACTION TAKEN**

The following information must be provided.

\_\_\_\_\_ The allegation(s) were unsubstantiated (i.e., not substantiated).

\_\_\_\_\_ The allegation(s) of verbal abuse were substantiated.

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

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

\_\_\_\_\_ The allegation(s) of corporal punishment were substantiated.

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

**STOP: Please submit pages 1-3 of this document to your assigned Senior Field Counsel (SFC) for review. If disciplinary action is to be taken, it can be taken only after your SFC has reviewed all of the required documentation and deems the investigation complete.**

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

**TENURED SUBJECTS**

The subject is a \_\_\_\_\_ tenured teacher \_\_\_\_\_ tenured administrator

If an allegation of misconduct is substantiated against a tenured teacher or tenured administrator, the punishment may include a letter of reprimand to the subject's personnel file, **and/or charges under State Education Law §3020-a**. If, after consultation with your assigned Senior Field Counsel, it has been determined that §3020-a charges might be warranted because of the serious or repetitive nature of the misconduct, or other factors concerning the teacher's or administrator's performance, the Deputy Counsel, Administrative Trials Unit ("ATU") of the Office of Legal Services *must* be consulted (212-374-6888).

\_\_\_\_\_ Senior Field Counsel was consulted on \_\_\_\_\_  
Date

\_\_\_\_\_ Upon consultation, a letter to file was recommended. \_\_\_\_\_  
Date

\_\_\_\_\_ Upon consultation, a Technical Assistance Conference was scheduled for \_\_\_\_\_  
Date

\_\_\_\_\_ Upon consultation, other action was recommended \_\_\_\_\_  
Date



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**NON-TENURED PEDAGOGUES AND OTHER STAFF**

\_\_\_\_\_ The Senior Field Counsel was consulted on

\_\_\_\_\_  
Date

\_\_\_\_\_ Upon consultation, a letter to file was recommended.

\_\_\_\_\_  
Date

\_\_\_\_\_ Upon consultation, the staff member was terminated on

\_\_\_\_\_  
Date

\_\_\_\_\_ Upon consultation, other action was recommended

\_\_\_\_\_  
Date

\_\_\_\_\_  
Report Preparer's Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Report Preparer's Signature

\_\_\_\_\_  
Date Prepared