



# Advocates for Children of New York

Protecting every child's right to learn since 1971

August 24, 2023

Judy Nathan

Office of the General Counsel  
52 Chambers Street, Room 308

New York, NY 10007

Via email: [regulationa-412@schools.nyc.gov](mailto:regulationa-412@schools.nyc.gov)

Re: Proposed Amendments to Chancellor's Regulation A-412

Dear Ms. Nathan,

#### Board of Directors

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Advocates for Children of New York (AFC) appreciates the opportunity to submit comments regarding the proposed amendments to Chancellor's Regulation A-412 (CR A-412). For over 50 years, AFC has worked to ensure a high-quality education for New York students who face barriers to academic success, focusing on students from low-income backgrounds. Every year, we help thousands of New York City families navigate the education system, including students who are suspended and arrested in schools. Based on this experience, we have worked to promote policies that keep students in school and provide them with the support they need instead of relying on exclusionary school discipline and policing practices that disproportionately harm Black students and students with disabilities. For example, we served on the 2013 New York City School-Justice Partnership Task Force<sup>1</sup>, as well as the 2016 Mayor's Leadership Team on School Climate and Discipline<sup>2</sup>, which was instrumental in proposing many of the changes to the Memorandum of Understanding (MOU) between the New York City Police Department (NYPD) and the Department of Education (DOE), completed in 2019 and serving as the basis for these proposed amendments to CR A-412. As such, we are well positioned to comment on the proposed changes to the regulation.

We are pleased with a number of the proposed amendments, including the revisions to the section on School-Related Incidents Requiring Emergency Medical Assistance and the inclusion and reference to CR A-411 regarding students in behavioral crisis and crisis de-escalation. In addition, we appreciate the edits to the sections on Student Arrests and Questioning of Students that strengthen protections for students when

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<sup>1</sup> See NYC SCHOOL-JUSTICE PARTNERSHIP TASK FORCE, KEEPING KIDS IN SCHOOL AND OUT OF COURT: REPORT AND RECOMMENDATIONS, vii, 28, 29 (2013), available at <https://www.nycourts.gov/ip/justiceforchildren/PDF/NYC-School-JusticeTaskForceReportAndRecommendations.pdf>.

<sup>2</sup> See THE MAYOR'S LEADERSHIP TEAM ON SCHOOL CLIMATE AND DISCIPLINE, MAINTAINING MOMENTUM: A PLAN FOR SAFETY AND FAIRNESS IN SCHOOLS, pgs. 39-42 (2016), available at [https://www.nyc.gov/assets/sclt/downloads/pdf/SCLT\\_Report\\_7-21-16.pdf](https://www.nyc.gov/assets/sclt/downloads/pdf/SCLT_Report_7-21-16.pdf).



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interacting with the NYPD and align with the relevant sections in the 2019 MOU and NYPD Patrol Guide.

At the same time, we have a number of recommendations for further aligning CR A-412 with the 2019 MOU between the NYPD and the DOE, to better protect students from unnecessary and traumatizing police involvement and the significant negative consequences of over referral to the juvenile and criminal legal systems. In particular, we want to ensure that the proposed amendments provide clear guidance to school staff and School Safety Division (SSD)/NYPD officers to promote safe, respectful, and supportive learning environments for students, reserving the use of punitive, exclusionary measures for the most egregious cases. Our recommended changes to the proposed amendments to A-412 reflect the common goal to better serve our young people in schools without unnecessary police and court involvement. In order to truly keep our young people safe and secure in schools, we must instead provide school-based supports and interventions to allow them to succeed.

### **Maintaining a Secure, Safe and Positive School Environment (Section I.B School Safety Agents and NYPD)**

We are concerned that the proposed language in Sections I.A and I.B of CR-412 overemphasizes the role of School Safety Agents (SSAs) and the NYPD in school safety, without making clear that there are specific behaviors that can and must be handled by school staff without the assistance of the NYPD and SSAs. This clear delineation of roles and responsibilities is crucial to prevent young people from juvenile and criminal legal system involvement for normal adolescent behavior. SSAs and the NYPD should not be permitted to intervene in a situation that can be safely and appropriately handled by DOE staff and the DOE's Discipline Code.

Given this concern, in Section I.B School Safety Agents and NYPD, we recommend including additional language that delineates the roles of school staff and SSAs/NYPD and lists the specific types of behavior where it is not appropriate for school staff to call SSAs or NYPD. The 2019 MOU contains such a list in paragraph 7. Listing the behaviors that must be handled by school staff and not NYPD and SSAs will help prevent the over referral of young people to our juvenile and criminal legal systems.

We recommend adding a new paragraph, with language taken directly from the 2019 MOU, before Section I.B.5 that states:

DOE staff are primarily responsible for addressing and responding to non-criminal student misconduct and must address and respond to non-criminal misconduct through the use of appropriate classroom management and de-escalation techniques, implementation of the school's ladder of referral, the imposition of discipline, supports and interventions, in accordance with the Discipline Code, Chancellor's Regulation and DOE policy.



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In addition, we recommend revising Section I.B.5 as follows:

School staff ~~should~~ must not call upon SSAs or NYPD (including the School Safety Division) to address or respond to non-criminal, minor student misconduct where school staff can safely address such misconduct. Such misconduct may include, but is not limited to: 1) disorderly conduct, 2) behaving in a rude or disruptive manner, 3) making excessive noise, 4) violating the dress code or uniform policy, 5) failing or refusing to provide identification upon request, 6) profane, obscene, vulgar, or lewd language, gestures or behavior, 7) use of racial or other slurs, 8) defying school officials, SSAs or members of the NYPD, 9) cutting class, tardiness and unexcused absence, 10) leaving school without permission; entering or attempting to enter a school building before or after school hours (not breaking and entering), 11) bullying, verbal abuse and/or harassment, 12) vandalism and/or graffiti in a school building, 13) possession or use of a prohibited item under the Discipline Code that does not violate the Penal Law (e.g., cell phones) and is not a Category I weapon as defined by the Discipline Code, 14) other behaviors categorized as Level 1, 2, and 3 in the Discipline Code. These behaviors may be addressed by school administrators pursuant to the Discipline Code and shall not be treated as violations of the criminal law to be referred to police or the court system. Where appropriate, school staff may request the assistance of an SSA to support the staff member in implementing school-based interventions and supports (e.g., escorting student to dean's office), if appropriate DOE staff are unavailable to support the intervention. If an SSA is needed to support the intervention, they are not permitted to use physical control during school-based interventions, absent an imminent safety threat.

#### **Notification Requirements for School-Related Incidents (Section IV.A)**

In addition, the proposed amendments to the Notification Requirements section fail to provide clear guidance to school staff on when to contact the NYPD and SSAs for school-related incidents and what constitutes criminal vs. non-criminal behavior. Without clear guidance, we are concerned that school staff will make the determination to involve the NYPD and/or SSAs in incidents that can be dealt with safely and effectively by school-based interventions.

In Section IV.A.1.a.i, concerning allegations of criminal misconduct, we recommend the following change to the language to provide additional guidance to help individual school staff to determine what constitutes “criminal activity” and when to involve the NYPD. We are concerned that without this clarifying language, school staff may incorrectly interpret the regulations as requiring them to call 911 when any behavior they believe might be criminal occurs and overreport allegations of criminal behavior by young people to the NYPD:

- a. In all cases where a school staff member, SSA or other non-DOE employee working in a school (e.g., CBO staff, custodian,) witnesses or has been provided



with information or an allegation that a school-related crime has been committed by a student, they must:

- i. immediately notify the principal/designee. The principal/designee must attempt to de-escalate school-based incidents involving students prior to calling or otherwise involving NYPD or SSAs. The decision to involve the NYPD or SSAs in any school-based incident must be made by the principal or designee as a last resort. SSA or other law enforcement involvement should not be requested in a situation that can be safely and appropriately handled by the school district's internal disciplinary procedures, including supports and interventions found within the DOE Discipline Code.

In Section IV.A.1.a.ii, we recommend the following change:

- ii. if the incident creates an ~~immediate safety threat~~ imminent and clear threat of serious physical injury<sup>3</sup>, the DOE must immediately notify NYPD and then advise the principal/designee.

In addition, we recommend clarifying Section IV.A.1.b. to mirror our recommendation above:

- b. When incidents cannot be safely and appropriately handled by the school or when required by law, the principal/designee ~~must immediately~~ may notify the NYPD (unless the NYPD has been contacted), and the SSA. If the principal/designee is unsure of whether the behavior alleged constitutes a violation of criminal law that they must report to the NYPD, they must consult with Field Counsel prior to calling NYPD.

Finally, in Section IV.A.2.a, concerning Non-Criminal Misconduct, while we are pleased the proposed amendments make clear that 911 should not be called or employed in response to non-criminal misconduct as a disciplinary response or disciplinary measure, we request that the regulation contain a list of behaviors where it is inappropriate to call 911 and contain the following clarifying language:

- a. Absent a real and imminent threat of serious physical injury to a student, teacher, or other member of the school community, any non-criminal school-related incident, accident, or medical emergency must be handled by DOE personnel and not by SSAs or other law enforcement. School staff are primarily responsible for addressing and responding to school-related non-criminal student misconduct through: the use of appropriate classroom management and de-escalation techniques; implementation of the school's ladder of referral;

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<sup>3</sup> "Serious physical injury" means physical injury which creates a substantial risk of death, or which causes death or serious and protracted disfigurement, protracted impairment of health or protracted loss or impairment of the function of any bodily organ. Penal Law § 120.10(4).



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and imposition of discipline, supports and interventions, in accordance with the Citywide Behavioral Expectations to Support Student Learning (“the Discipline Code”), and applicable Chancellor’s Regulations and DOE policy. Whenever responding to alleged student misconduct, DOE personnel shall seek to de-escalate the behavior using a trauma-informed approach. In no circumstance should 911 be called or employed in response to non-criminal misconduct as a disciplinary response or disciplinary measure.

Thank you for the opportunity to comment on the proposed amendments to CR A-412. Please do not hesitate to contact us if you have any questions.

Respectfully,

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