

The Coalition for Transparency in Public Education

The “Safe Schools” Transfer Option and Under-Reported Sexual Molestation of Disabled Students in NYS

August 29, 2006

Executive Summary

A key feature of the No Child Left Behind (NCLB) law is the development by state education departments of a school violence index, under the NCLB's persistently dangerous schools requirement. Students who are victims of violent crime or who attend “persistently dangerous” schools are to be offered transfer to a safe school in their district. Those federally required protections are voided, however, when the State illegally waives reporting requirements for special education schools, BOCES centers, District 75 schools, and the two State-operated schools as NYSED has done. Through non-implementation of these federal requirements, NYSED has denied parents of students in those persistently dangerous schools the required proffer of a transfer to a safe school.

Of equal concern, and because NYSED did not seek or hold open hearings where parents – arguably the main stakeholders – could provide input on violence in the schools, NYSED developed a violence reporting and weighting system that has not been subject to public scrutiny and *that does not count the sexual molestation of seriously disabled students as much as the sexual molestation of nondisabled students*. By excusing, minimizing, and otherwise trivializing the sexual molestation of students who are so disabled that they cannot legally give consent as an “other sex offense” instead of treating it as the aggravated offense that it is, parents of disabled students are explicitly denied the mandated proffer of a transfer to a safe school.

This type of State-sanctioned discrimination is unconscionable, illegal, and must be stopped.

The problem arises, in large part, because of the manner in which NYSED has defined the categories of violent and/or criminal behavior. Section 100.2 (gg) of the Regulations of the NYS Commissioner of Education amended on July 13, 2006, define sex offenses as follows:

b) Sex offenses. (1) **Forcible sex offenses.** Forcible sex offenses involving forcible compulsion. Incidents involving forcible compulsion and completed or attempted sexual intercourse, oral sexual conduct, anal sexual conduct or aggravated sexual contact with or without a weapon, including, but not limited to, rape and sodomy.

(2) **Other sex offenses.** Other sex offenses involving inappropriate sexual contact but no forcible compulsion, including, but not limited to, conduct that may be consensual or involve a child who is incapable of consent by reason of disability or because he or she is under 17 years of age, ...

(8) **School violence index.** . . . The school violence index will be computed in accordance with a formula established by the commissioner that takes into account the enrollment of the school and is weighted to reflect the most serious violent incidents, which shall include but need not be limited to the following categories of incidents: homicide, forcible sexual offense, . . .¹
[Underscore added].

"Other sex offenses," i.e., molestation of severely disabled students, are not included in "the most serious violent incidents." The "most serious" sexual incidents are those deemed "forcible."

The Coalition recommends some simple solutions:

1. Merge "other sex offenses" into the "sex offenses" category, and treat the molestation of a student too disabled to give consent as at least equal to, if not greater than, any other sexual offense involving forcible compulsion, with no mitigating factors.
2. Count sexual molestations involving a nondisabled student offender and a severely disabled student victim as the highest category of sexual offense, irrespective of the ages of the victim and perpetrator.
3. Insure that all schools and educational programs in NYS report their data, as required by NCLB, and include all BOCES, District 75 schools and State-operated schools and include their numbers in all such NYSED reports. Discipline administrators who fail to report full and complete data for their school or facility.
4. Insure that all data are made publicly available in a timely fashion.
5. Schedule public hearings regarding persistently dangerous schools criteria to solicit input from parents and other concerned stakeholders.
6. Require the State to upload the violence/crime data to its public web site in a timely fashion and at least 60 days before any decisions regarding persistently dangerous schools issues are to be made by the Board of Regents.

¹ Under this formula, given for the first time in a NYSED memo to the Regents (dated June 8, 2006, but not posted to NYSED public web site until on or about June 20, 2006), both "forcible sex offenses" and "other sex offenses" (e.g. sex with an individual too disabled to give consent) might appear to count equally, but the language of the regulation and the NYSED FAQ provided for school administrators make it clear that: (a) reporters are free to use discretion in how individual offenses within the category are scored, and (b) "other sex offenses" does not count toward a school being named persistently dangerous. The implications of this are, simply, reprehensible.
<http://www.regents.nysed.gov/2006Meetings/June2006/0606emscvesida5.htm>