

Addendum to letter issued June 27, 2001

Re: CS 66X
SCI Case #2001-1703

The Chancellor's District updated "the blue card" effective June 6, 2001. It now reads: "*(Take these steps concurrently or consecutively, as quickly as possible.)*" Moreover the first step requires calling the police immediately when the allegation involves "*criminal activity, including sexual misconduct.*" In our view, the revision of the card supports our contention that the instructions in effect on May 22, 2001 were confusing.

June 27, 2001

Hon. Harold O. Levy
Chancellor
New York City Public Schools
110 Livingston Street; Room 1010
Brooklyn, NY 11201

Re: CS 66X
SCI Case #2001-1703

Dear Chancellor Levy:

Late in the morning of May 22, 2001, at City Hall, New York City Mayor Rudolph Giuliani and City Council Speaker Peter Vallone, flanked by Police Commissioner Bernard Kerik, Chancellor Levy, and others, announced the proposed new legislation which will require school personnel to report information relating to suspected crimes involving the health and safety of a child to the police and the school principal. Failure to do so will be punishable as a misdemeanor. Incredibly, at about the same time in another part of the City, two boys were victimizing two girls in a public school stairwell in the Bronx. The assistant principal who learned about it intended to call the police, but changed her mind about doing so. In determining how she came to reverse her decision, we saw much that is wrong with the current reporting procedure. Furthermore, it became clear that the Chancellor's mandate to report crimes to the New York City Police Department ("NYPD"), which was already in place, was not as clear to employees, at both the school and central levels, as had been thought.

An investigation conducted by this office has confirmed that Judith Ramirez, an Assistant Principal at CS 66 in the Chancellor's District, failed to contact the NYPD upon learning that a sixth-grade boy, aided by a male friend, had sexually touched two fifth-grade girls.¹ However, we found that Ramirez had planned to call the police, but was steered from doing so by Donna Baker, the Assistant Director of Pupil Personnel for the Chancellor's District, from whom she had sought guidance.

This investigation began when a lieutenant from the NYPD's Special Victims Squad in the Bronx notified this office that his detectives were investigating an incident of alleged sexual abuse at CS 66 that had occurred more than 24 hours earlier. In fact, although the assistant principal became aware of the incident shortly after it happened, she did not notify the police. Moreover, to the surprise of the officers and detectives who responded to the school, the assistant principal explained that she had been instructed not to contact the police by an official at the Board of Education's headquarters.

May 22, 2001: The Incident

Between approximately noon and 12:30 p.m., two fifth-grade female students ("Student A" and "Student B") were accosted by two sixth-grade male students ("Student C" and "Student D") in the stairwell of CS 66. Student C touched the girls' intimate areas and, as the girls attempted to flee, Student D blocked their exit. Student A and Student B found another passage, ran to teacher Jason Dono, and reported the assault. Dono instructed the girls to write statements, informed Assistant Principal Judith Ramirez about the incident, and turned Student A and Student B over to her.²

May 22, 2001: The Incident Is Not Reported To The NYPD

Assistant Principal Ramirez

Information about the involvement of Judith Ramirez, the assistant principal in charge of the upper grades at CS 66, came from a number of sources. She met with an attorney and investigators from this office, wrote a statement about her actions for the Chancellor's District Superintendent, and also was questioned at a "disciplinary conference" by the Deputy Superintendent.³

¹ On May 24, 2001, Ramirez was reassigned to the Chancellor's office.

² Information about Dono's involvement came from him during an interview with our investigators in the presence of his attorney and from Ramirez.

³ Her union representative appeared with her at the disciplinary conference; that representative and a union attorney were also present when she met with this office.

Although she did not realize it until later, Assistant Principal Ramirez had been drawn into the incident in the stairwell even before Dono came to her with the girls. About an hour earlier, a sixth-grade teacher had reported that Student C and Student D were not in her class and their whereabouts remained unknown for at least 40 minutes. Upon being located, the assistant principal questioned the boys who initially claimed they had not been missing and then became quiet when Ramirez continued to demand information about where they had been. A short time later, when Student A and Student B arrived with Dono, Ramirez learned that Student C was one of the boys who accosted them in the stairwell. According to her, the following then occurred:

- Ramirez spoke to the visibly upset girls and had them write a second statement.
- She sent for Student C and questioned him.
- Student C denied committing the conduct and blamed two other boys whom he claimed were already in the stairwell. He was reduced to tears, but, according to Ramirez, she “knew he was lying.” That the boy was “missing” for the exact time period when the girls alleged the sexual abuse was an important fact for the assistant principal.
- The assistant principal informed Student C that she was calling his mother because he was being arrested.
- Ramirez called the boy’s mother and demanded that the woman come to the school because she was calling the police to report Student C’s conduct in the stairwell.
- She spoke to Student D who acknowledged being with Student C, but claimed that two other boys were involved in the incident with the girls. He also wrote a statement.
- Because the principal was out of the building, Ramirez notified Assistant Principal Doreen Duff, who was in charge, that she was calling the NYPD.
- Duff suggested that Ramirez contact Donna Baker, Assistant Director of Pupil Personnel at the Chancellor’s District, asserting “you want to get this right” and “[Baker’s] good, she’ll tell you the order.” The Chancellor’s District had developed a lengthy checklist of the procedure to be followed in reporting student-upon-student incidents in its schools.

- Ramirez took the advice and called Baker, gave her the details of the incident, and explained the plan to notify the police. In response, Baker told her not to call the NYPD because the assistant principal needed to investigate further. According to Ramirez, Baker termed her information as “the boys against the girls.” Moreover, she asserted that the assistant principal needed to speak with “the two other boys” in the stairwell.
- Ramirez explained to Baker that she was already giving Student C and Student D a Principal’s suspension for cutting class and inquired about a Superintendent’s suspension based on the incident. Again, Baker questioned the status of the assistant principal’s investigation, asking whether she was sure the girls would testify at a hearing.
- Baker directed Ramirez to go ahead with the planned five-day suspension of the boys which would give her additional time to conduct a more thorough investigation. Baker also told the assistant principal to call the girls’ parents and arrange counseling for them and for Student C.
- Ramirez went over the instruction not to notify the police with Baker and she verified that it was correct.
- Baker also instructed Ramirez to notify the Office of the Superintendent of Instruction for the Bronx Region and the Emergency Information Center, the location at central headquarters which logs incidents and information to keep the Chancellor’s office apprised of occurrences within the school system. This was consistent with the procedure outlined on the district’s checklist. Ramirez made contact with both offices.
- By that time, Student C’s mother and sister had arrived at the school and Ramirez now informed them that she was not calling the NYPD, although the girls’ families might press charges. However, she handed the mother a notice that Student C was being suspended for five days and let the woman leave with her son and daughter.
- The assistant principal also called the homes of both girls. She reached a voice answering system at Student A’s residence and left a message asking the parents to call her or come to the school in the morning because there had been an incident involving the girl. According to Ramirez, because she did not know who might listen to the communication, she did not go into specific details. She also spoke with Student B’s mother, described the incident, and advised that she could press charges. According to Ramirez, the mother asserted that she would discuss the matter with Student B when the girl got home.

- Principal Marcia Gonzalez returned to the school and Ramirez reported the incident in the stairwell and recounted her conversation with Baker. Gonzalez was surprised by Baker's instruction, but deferred to it as the assistant principal had.

May 23, 2001: The Police Become Involved

Principal Gonzalez and Assistant Principal Ramirez

Information about Principal Marcia Gonzalez's role came from a meeting with an attorney and investigators from this office and from notes taken at a "disciplinary conference" with the Deputy Superintendent.⁴

Toward the end of the school day on Wednesday, May 23, 2001, Principal Gonzalez was concerned about a new report that the incident in the stairwell the day before may have involved a rape. She called Student A and Student B to her office, an action which would ultimately result in police intervention.

Gonzalez met with the girls because Assistant Principal Ramirez was out of the building handling testing matters at the time. At the principal's request, each girl wrote a third statement which was consistent with the prior two, confirming that no rape was committed. The mother and stepfather of Student A appeared at the school, upset that they were just learning about the incident. Ramirez returned to the school and a discussion ensued about whether or not the parents had been contacted.⁵ The stepfather made a call on his cell phone and about ten minutes later NYPD officers and EMS technicians came to the scene. By that time, Student B's mother had arrived at the school and was also upset.

The principal and assistant principal provided the responding NYPD personnel with information about the boys. The police commenced an investigation. The following afternoon, Student C and Student D were arrested on sexual abuse charges.

Why The School Did Not Notify Police

Donna Baker, Assistant Director of Pupil Personnel Services for the Chancellor's District

Through her attorney, Donna Baker declined the opportunity to speak with this office. Information about her involvement was found in a statement she wrote for the

⁴ Her union representative appeared with her at the disciplinary conference; that representative and a union attorney were also present when she met with this office.

⁵ The parents acknowledged receiving a message from the school on Tuesday, but asserted that the seriousness of the matter was not conveyed to them.

Superintendent, an e-mail addressed to the Superintendent, Deputy Superintendent, and the Director of Pupil Personnel in which she summarized incidents reported by various schools throughout May 22, 2001, notes from her “disciplinary conference” with the Deputy Superintendent, and the statements of Assistant Principal Ramirez.

Baker’s version of the basic facts is not that different from Ramirez’s with the exception of the instruction not to call the NYPD.⁶ She does not recall any mention of the police in her conversation with the assistant principal. According to Baker, Ramirez phoned in a report of “student to student sexual harassment.” Yet, Baker’s statement describes the incident as two fifth-grade girls who alleged that a sixth-grade boy “grabbed the girl’s breasts and tried to lift up one of the girl’s shirt.” Baker admitted informing Ramirez to call the parents “before the children leave for the day for fear that the story will get bigger and bigger.” She also acknowledged the other instructions she gave to the assistant principal, except the one about not calling the police. During her disciplinary conference, Baker told the deputy superintendent that she never received the June 16th e-mail from the Chancellor about reporting procedures.

Assistant Principal Ramirez

On the most important point, calling the police, Assistant Principal Ramirez’s view of their conversation is in direct conflict with Baker’s. It is clear from other evidence, however, that Ramirez intended to call the NYPD before contacting Baker. If she fabricated Baker’s involvement in order to cover herself, Ramirez must have reversed her decision to call the police for some other reason and then immediately chosen to implicate Baker. This theory makes little sense. There was no logical reason for her to change her mind, unless it was upon the advice of Baker. Furthermore, other evidence contradicts the theory.

- Student C’s mother: The woman’s description of the call she received from Ramirez is nearly identical to the one provided by the assistant principal.⁷ She confirmed that Ramirez insisted: “You must come to school, we have a serious problem with your son, and I am going to call the police.”⁸

⁶ Board of Education telephone records do not show the call from CS 66 to Baker’s office. Since both agree that the call occurred, the only logical inference is that, for some reason, the records did not pick up the call. This is not an uncommon occurrence with telephone systems of large organizations. In any event, the records have no evidentiary value on this issue: They neither support nor contradict the main witnesses.

⁷ An investigator from the Chancellor’s Office of Special Investigations interviewed Student C’s mother. She refused to repeat the facts to an investigator from this office.

⁸ We did not interview Student C because of the pending criminal charges.

- Assistant Principal Duff: Duff confirmed that Ramirez notified her about the imminent call to the police and she acknowledged suggesting that Ramirez first “call downtown” in order “to make sure we do everything right.” Duff provided the number for the office of the Director of Pupil Personnel Services, written on a Post-it that was still attached to Ramirez’s blue card when she met with our attorney and investigators. Moreover, she was concerned that Ramirez “get the order [of calls] right” because Duff was once criticized for making a mistake in the sequence of notifications. Duff’s advice was consistent with the Chancellor District’s checklist of reporting instructions.
- School Secretary Melissa Bell: Ramirez approached her desk and announced “I have to call Donna Baker’s office.”⁹ Bell then observed the assistant principal on the phone and heard her say at one point, in apparent confirmation of the advice she received, “I’m not to call the police. I’m supposed to do more internal investigation.”
- Principal Gonzalez: Upon returning to the school and learning about the incident, Gonzalez was surprised that Ramirez had not called the police, but the assistant principal explained that Donna Baker instructed her not to do so. According to the principal, she asked: “Are you sure?” and Ramirez replied, “Yes.”
- The NYPD: A police report notes that when questioned by NYPD personnel about why she had not contacted them, Ramirez responded that Board of Education official Donna Baker instructed her to conduct an internal investigation.

The Order of Notifications

The Chancellor’s e-mail

On June 16, 2000, the Chancellor sent an e-mail to all principals, superintendents, and the Chancellor’s staff, regarding “Notification Procedures” and re-circulated it on May 23, 2001, after the CS 66 incident came to light. The message to employees is “to use common sense in reporting matters up the line. The various regulations promulgated over the years set out the legal standards” and a summary is included in the mail. It continues: “These regulations, however, set out only the legal minimum. If you think it is important, advise your superintendent.”

⁹ Although the assistant principal speaks Spanish and had done so during the phone conversation with Student C’s mother, Ramirez had requested that Bell remain available to assist her in speaking to the woman. However, the mother brought her daughter for that purpose.

Chancellor's Regulation A-412

The information that is relevant to the situation at CS 66 is found in Chancellor's regulation A-412 relating to school related crimes. The e-mail summarized its contents as follows:

- Staff must notify principal or his/her designee.
- Principal or his/her designee must notify the police, the School Safety Agent assigned to the school (SSA), the superintendent, and the parent/guardian of the suspect.
- If the victim is a student, the principal or his/her designee must also notify the parent/guardian of student.

"The Blue Card"

While speaking with Principal Gonzalez, Assistant Principal Ramirez, and Assistant Principal Duff, each referred to "the blue card," the checklist which delineates the steps to be taken in a student-upon-student situation, which Ramirez referred to in deciding her course of action on May 22, 2001, following the report by the two girls.¹⁰ In fact, Ramirez had it in her hand as she approached Duff to notify her that she was about to call the police. The card, issued by the Chancellor's District, is entitled, "Responding to Incidents Between Students: *Procedures for Principals (All steps are taken concurrently.)*." The two-sided card lists thirteen check-off points relating to various aspects of investigating and reporting student-upon-student incidents.¹¹ Only two of the check-off points reference calling the police and both come after extensive discussion about conducting an internal investigation.

By contrast, the information on the "Emergency Desk Reference Card" used in District 27 regarding student-upon-student sexual abuse situations makes clear that the police are to be called immediately. This instruction is in bold and first on the list of actions to be taken. Then, after the police have been contacted, the employee is directed to make additional notifications and take other steps. The District 27 instructions are much clearer than those issued by the Chancellor's District.

¹⁰ In fact, Principal Gonzalez noted that other cards in other colors lay out the procedures for other situations.

¹¹ A photocopy is attached.

Conclusion

It is clear that the incident in the stairwell at CS 66 should have been reported to the NYPD on May 22, 2001. However, the primary cause for the failed notification did not occur at the school level; rather, the fault rests at the Chancellor's District. Assistant Principal Ramirez planned to contact the police, but was told not to by Assistant Director of Pupil Personnel Services Baker. It was reasonable for Ramirez to follow Baker's directions; after all, the district's confusing checklist describing the reporting procedure recommends calling the Director of Pupil Personnel with questions about suspensions. Moreover, it was rational to conclude that employees at the district office would know more about interpreting the rules than would school personnel.

Apparently, however, as this case illustrates, district staff remains as confused as school administrators do. While the Chancellor's current policy unquestionably requires police notification upon learning about a crime committed by a student upon another student, at the same time, others are to be contacted as well. Administrators and other staff are left to determine the order of notifications on their own. Obviously a principal or designee cannot make every call "concurrently." Should the police come before the superintendent's office or vice versa? What about parents of victims and suspects – are they before or after the police and the Chancellor? The directions used in District 27 are much clearer and leave little question that the police are to be called first.

In our view, the most logical rule is also a simple one: Call the police first and without delay. While it is understandable that others need to know about serious incidents as soon as possible, their requirements must take a back seat to the safety of schoolchildren. As demonstrated by this case, a decision to make the first call anywhere but to the NYPD may delay a report not by minutes, but by days. Contacting "up the line" practically invites suggestions to take other steps before calling the police. In fact, but for an unusual set of circumstances, the NYPD might never have learned about the stairwell attack at CS 66. Furthermore, there is a need for uniformity throughout the districts.

Recommendations

Procedure

Reporting Procedure: In addition to advising the specific employees named below, all staff should be reminded of the proper reporting procedure. However, first, the exact procedure must be established and clearly disseminated. The notion that all

interested parties can be notified “concurrently” is physically impossible and tends to complicate rather than simplify the process. School personnel should be held accountable for failures to report but, to be fair, it must be clear to whom they report and when. Again, we favor calling the police first when sexual abuse is alleged.

Individuals

Assistant Director of Pupil Personnel Services Donna Baker: While she denied any conversation about the police with Ramirez, other evidence corroborates the assistant principal’s version. Moreover, the facts reported by Ramirez as noted by Baker certainly should have prompted a discussion about notifying the NYPD. We recommend that appropriate disciplinary action be taken against Baker and that she be formally advised of proper reporting procedure. Moreover, that failure to adhere to it may result in additional disciplinary action in the future.

Assistant Principal Judith Ramirez: She realized that the situation called for police involvement, but, while attempting to follow the rules, became confused by the instructions she received from the Chancellor’s District personnel whom she relied on as experienced in reporting procedure. Moreover, Baker’s directive placed Ramirez in an impossible situation: Face potential disciplinary action for not contacting the NYPD if Baker turned out to be wrong – which she was – or face criticism, if not discipline, for calling the police in complete disregard of an instruction issued through the district office. Some disciplinary action, such as a reprimand, might be warranted in addition to Ramirez being formally advised of proper reporting procedures. However, the role played by the Chancellor’s District is such that it mitigates Ramirez’s conduct and suggests that her punishment should not exceed a reprimand. Obviously, she should be warned that any future failure to adhere to proper procedures could result in disciplinary action.

Assistant Principal Doreen Duff: While in charge of the building, she understandably attempted to have Ramirez “get the order right” and suggested obtaining guidance from the Superintendent’s office. In so doing, however, she stopped her colleague from immediately contacting the police. We recommend that she be formally advised of proper reporting procedure and that failure to adhere to it may result in disciplinary action in the future. A reprimand may also be appropriate.

Principal Marcia Gonzalez: The principal realized that the stairwell incident potentially required police intervention, but, along with Ramirez, deferred to Baker’s judgment. We recommend that she be formally advised of proper reporting procedure and that failure to adhere to it may result in disciplinary action in the future. A reprimand may also be appropriate.

Teacher Jason Dono: Dono followed the rules by turning the incident information over to the assistant principal, but delayed that report by having the girls write statements first. We recommend that he be formally advised of proper reporting procedure and that failure to adhere to it may result in disciplinary action in the future.

We are forwarding a copy of this letter to the Office of Legal Services. We are also forwarding a copy to the State Education Department for whatever action they deem appropriate. Should you have any inquiries regarding the above, please contact First Deputy Commissioner Regina Loughran, the attorney assigned to the case. She can be reached at (212) 510-1426. Please notify Ms. Loughran within thirty days of receipt of this letter of what, if any, action has been taken or is contemplated regarding the recommendations made here. Thank you for your attention to this matter.

Sincerely,

EDWARD F. STANCIK
Special Commissioner
Of Investigation for the
New York City School District

By:

Regina A. Loughran
First Deputy Commissioner

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c: Chad Vignola, Esq.

NEW YORK CITY BOARD OF EDUCATION

CHANCELLOR'S DISTRICT

Sandra Kase, Ed.D, Supervising Superintendent

RESPONDING TO INCIDENTS BETWEEN STUDENTS *Procedures for Principals (All steps are taken concurrently.)*

- ☐ Interview (or assign a designee to interview) the students individually to obtain the facts:
 - What happened?
 - Who was involved?
 - Where did it happen?
 - When did it happen?
 - Who observed the incident? (witnesses: adults and students)
- ☐ Have an observer present, preferably the guidance counselor or Assistant Principal. If the allegation is sexual, involve an observer of the same sex as the victim(s).
- ☐ Request written statements from the students. For young students who are not able to write, ask your observer to transcribe the statement. Each statement must bear the name of the student, class, date, signature and name/signature of the transcriber.
- ☐ If security is required, contact the highest ranking School Safety Officer in the building; for additional support, call the Borough Office of School Safety.
- ☐ If an allegation of a *crime* is reported, you are obligated to call the Police; if in doubt, contact the Youth Officer to inquire. For an immediate response, dial 911.
- ☐ If medical attention is warranted, call 911 to request EMS.
- ☐ Serious incidents (police or medical) are to be reported to the Emergency Information Center (EIC), **718-935-3210**.
- ☐ **TELEPHONE** the PARENTS of all students involved. Request that they come to the school promptly. If you are unsuccessful, direct an outreach staff member, such as a family worker, to visit the home. Continue outreach efforts. The principal has the right to interview students (in loco parentis); however, for alleged perpetrators, it is prudent to ask the parents, if reached quickly, whether they wish to be present.

**NEW YORK CITY BOARD OF EDUCATION
CHANCELLOR'S DISTRICT**

Sandra Kase, Ed.D., Supervising Superintendent

RESPONDING TO INCIDENTS BETWEEN STUDENTS

Procedures for Principals (All steps are taken concurrently.)

- ☐ For serious cases (police or medical), contact the Supervising Superintendent and then the Instructional Superintendent to report the incident.
- ☐ Arrange for the alleged perpetrators and witnesses to come to your office. Request written statements. Interview the witnesses individually in the presence of an observer, preferably a guidance counselor or Assistant Principal. Each adult's statement must bear his/her name, title and date; for students, name, class, date, signature and, if needed, name/signature of the transcriber.
- ☐ If a Superintendent's student suspension is deemed necessary in accordance with the Discipline Code, contact the Director of Pupil Personnel Services.
- ☐ In the case of a police response, police officers may not question students unless the parents are present. In the event that the police officers make an arrest, you may not permit the officer to take the student to the police Precinct unless the parent is present or a school staff member accompanies the child and waits with the child at the Precinct, until the parent arrives at the Precinct.
- ☐ Submit a SCHOOL SAFETY REPORT, with all pertinent documentation appended, to the Supervising Superintendent and Instructional Superintendent, within 24 hours. Documentation includes statements of the victims and witnesses, as well as the Principal's written account of the events and actions taken.

REFER TO THE APPLICABLE CHANCELLOR'S REGULATIONS FOR STUDENTS.