

SNIFFEN & SPELLMAN, P.A.

DUVAL COUNTY SCHOOL BOARD

Interim Report
February 9, 2023

I. Introduction & Background

The Duval County School Board (“School Board” or “District”), engaged our firm to conduct an administrative investigation regarding the School Board’s compliance and corrective action in response to certain matters addressed by Twentieth Statewide Grand Jury’s (“Grand Jury”) Interim Reports, Presentment, and Final Report as well as subsequent communication from the Florida Department of Education (“FDOE”) Office of Safe Schools regarding concerns of systematic underreporting of incidents of criminal activity occurring at the District’s schools.

The Grand Jury was convened in June of 2019 in the aftermath of the February 14, 2018 murders of fourteen children and three educators at Marjory Stoneman High School in Parkland, Florida which is located in Broward County. The Grand Jury was impaneled by the Florida Supreme Court after a Petition for the same was filed by Governor Ron DeSantis on February 13, 2019.

From the outset, the Grand Jury, among other areas of concern, focused on Florida’s school districts and the reporting of School Environmental Safety Incident Reporting (“SESIR”) data. SESIR data is reported to the FDOE and covers some twenty-six categories of disciplinary infractions potentially occurring on school campuses. In the Grand Jury’s Second Interim Report issued on December 11, 2019, the Grand Jury noted that school districts were “intentionally not reporting SESIR incidents.” The Second Interim Report included five recommendations to FDOE and School Districts. Notably, in those recommendations, the Grand Jury stated:

- “SESIR Incidents that have analogs in Florida’s criminal code are crimes. Therefore, they should be treated like crimes and reported to law enforcement. School districts should not ever be in a position to tinker with phrases like “may” and “expected to” and “may not exceed” when it comes to informing law enforcement agencies of criminal activity.”

- “. . . school districts should never be in a position to interpret vague language in SESIR definitions on their own. That said, the FDOE will likely have to make itself available, either via hotline or some other prompt means, to answer any remaining interpretational issues faced by the school districts.”¹

On December 10, 2020, the Grand Jury released its Third Interim Report and continued its expression of concern regarding SESIR reporting. That report specifically noted concern over the Duval School District and the District Administration’s downplay of reporting certain acts of misconduct and misdemeanors to law enforcement. The Grand Jury also noted that over the 2016-2020 time period, despite the existence of a trained and active Duval School Police Gang Liaison Detective, only six incidents of gang related activity were reported out of over 30,000 SESIR incidents.² The Grand Jury found this situation, “unacceptable.”³

On August 18, 2022, the Florida Supreme Court unsealed and published a Presentment by the Grand Jury which had been received by the Court on January 15, 2021. The Court also unsealed the Grand Jury’s Final Report on August 18, 2022. The Final Report had been received by the Court on August 16, 2021. Both the Presentment and Final Report specifically addressed certain matters pertaining to the School Board and District.

The Presentment noted that the District’s Administration had admitted to the FDOE that there has been a failure to correctly report some 2,000 SESIR incidents due to a software “technical glitch” which had been corrected. The Grand Jury did not find this explanation availing and called the administration to task for allowing administrators to claim that they had “consulted” with law enforcement by simply calling the Duval School Police Department’s call center and obtaining a case number without any actual consultation. Moreover, the Presentment found that a minimal interaction with law enforcement via a simple phone conversation or passing hallway conversation did not meet the SESIR requirement that crimes be reported to law enforcement.”⁴ The Grand Jury found that FDOE had always made clear to school district’s that this type of cursory consultation was insufficient to satisfy SESIR’s requirement that incidents be reported to law enforcement.⁵

¹ Second Interim Report of the Twentieth Statewide Grand Jury, at p. 12.

² Third Interim Report of the Twentieth Statewide Grand Jury, at. p. 13.

³ Id. at p. 14.

⁴ Presentment by the Twentieth Statewide Grand Jury, at. p. 7.

⁵ Id.

In its Presentment, the Grand Jury also devoted substantial attention to what it termed as “overt fraud” directed by then Duval County Schools Police Chief, Michael Edwards. In summary, the Grand Jury stated that it had received testimony that Mr. Edwards:

- Directed his officers, via written procedure orders to not report certain of battery on school officials as actual criminal activity.
- Prohibited officers from making arrests on the scene unless a dangerous weapon was used.
- Between 2016 and 2019 caused a failure to report some 2,621 information reports as offense reports.
- Perpetuated a policy which caused a number of crimes not to have a CCR number issued which would result in reports to FDOE and FDLE.
- Prohibited most all misdemeanor arrests.
- Discouraged cooperation with other law enforcement agencies.
- Ordered “unarrests” of individuals already in custody.

Based on the testimony received, the Grand Jury indicated it would normally have issued an Indictment with its Presentment; however due to a “quirk of Florida law” it was unable to do so. The Grand Jury did, however, note that it had been informed that prosecution “will proceed via Information brought by the Office of Statewide Prosecution” and that it encouraged and supported such action.⁶ Mr. Edwards resigned his position shortly after the release of the Grand Jury’s Presentment.

The District Administration did not escape mention as to these matters. The Grand Jury received testimony that “cheat sheets” were prepared to instruct readers regarding whether an incident report was required to be reported to police or a CCR number issued. Then Executive Director, Discipline and Student Support, Jackie Simmons, helped prepare these documents which were then used by Mr. Edwards as directives to his officers.⁷ The Grand Jury noted that educators and administrators are “woefully ill-equipped to make law-enforcement decisions” and that, generally, school police chiefs should not be answerable and reporting to the districts, but rather to the law enforcement agency with geographical jurisdiction (preferably, the County Sheriff).⁸

⁶ Id. at p. 14.

⁷ Ms. Simmons is no longer Executive Director of Discipline and Student Support.

⁸ Presentment of the Twentieth Statewide Grand Jury, at. pp. 11-12.

The Grand Jury's Final Report only briefly addressed the Duval School District specifically. The Final Report noted that the former School Police Chief was essentially offered a diversion disposition which removed him from office and caused his surrender of his law enforcement credentials.⁹ The Final Report did, however, encourage the citizens of Duval County to determine whether a more thorough housecleaning of the District might be in order.¹⁰

On August 29, 2022, Tim Hay, the Director of FDOE's Office of Safe Schools, sent Superintendent Green correspondence following up on the Grand Jury's Final (and previous Interim Reports and Presentment). In that correspondence, Director Hay echoed the findings of the Grand Jury. Specifically, Director Hay stated:

- School officials violated – and continue to violate – state law by systemically underreporting incidents of criminal activity to the Florida Department of Education.
- Duval County had written policies in place that permitted administrators to claim they had “consulted” with law enforcement when all they had done was a simple phone conversation with the Duval School Police call center or a brief passing conversation in the hallway. Further, Duval County believed that these brief conversations were enough to meet SESIR's requirement that certain crimes be “Reported to Law Enforcement,” contrary to Florida Department of Education rules.
- Duval County failed to correctly report over 2,000 SESIR incidents due to a “technical glitch.”

Based on these matters, the Office of State Schools conducted interviews with District Administrators on September 8, 2022.

II. Scope of Review

Based upon our discussions with Chief Legal Counsel, J. Ray Poole, we determined a scope of review with respect to this investigation. Initially, our scope is to essentially review all available documentation provided by the Legal Counsel's office to gauge the District's corrective action and/or compliance as to the matters

⁹ Final Report of Twentieth Statewide Grand Jury, at p. 98.

¹⁰ Id.

raised by the FDOE office of State Schools and as reflected in the various findings and determination of the Twentieth Statewide Grand Jury as they pertained specifically to the District.¹¹ Importantly, our scope does not include analysis of past instances of non-compliance or other violations including those of the former School Police Chief. However, we have reviewed and do offer our analysis on the corrective action and compliance efforts of the District’s current policies and procedures as to the District’s obligation and duty to accurately report SESIR data to the FDOE.

We have also provided our analysis and recommendations as to how the School Board and District may further measure compliance regarding the accurate gathering and submission of SESIR data via testing and review of District training of front-line staff charged with the day-to-day duty of reporting instances of conduct to law enforcement and submission of SESIR data.

III. Findings

A. Overview

The critical importance of safe schools cannot be overstated. Certainly, every stakeholder in the Duval County Public School system, whether Board Member, Administration member, or District employee is aware of this fundamental precept. The obligation is moral and constitutional. Section 1(a), Article IX, of the Florida Constitution provides, “The education of children is a fundamental value of the people of the State of Florida. It is, therefore, a paramount duty of the state to make adequate provision for the education of all children residing within its borders. Adequate provision shall be made by law for a uniform, efficient, *safe*, secure and high quality system of free public education. . .” [emphasis supplied]

The obligation and duty to provide safe schools, as determined by the Florida Legislature, is also specific to the School Board. Section 1006.07, Florida Statutes makes it clear that, “The district school board shall provide for the proper accounting for all students, for the attendance and control of students at school, and for the proper attention to *health, safety, and other matters relating to the welfare of students.*” [emphasis supplied].

One of the many duties imposed by the Florida Legislature on district school boards is the adoption of policies to ensure the accurate and timely reporting of School Environmental Safety Incident Reporting, or SESIR data to the FDOE.

¹¹ We have also reviewed publicly facing materials from the District’s and FDOE’s websites.

Section 1006.07(9), Florida Statutes. School district superintendents are responsible for SESIR reporting. *Id.*¹² The Legislature has also established, within the FDOE, the Office of State Schools as the central repository for best practices, training standards, and compliance oversight in all matters regarding school safety and security. Section 1001.212, Florida Statutes. Subsection (8) of that provision requires the Office of Safe Schools to provide school districts with technical assistance with respect to SESIR reporting. Importantly, the Office of Safe Schools is required to review and evaluate SESIR reports to ensure compliance. *Id.*¹³

The FDOE's SESIR implementation rule is found at FAC 6A-1.0017. The Rule, which was recently updated on December 14, 2022 provides:

The purpose of this rule is to set forth the requirements school districts and charter schools must use to report disruptive or criminal incidents to the Florida Department of Education so that the data can, in turn, be used in required state and federal reports, including EdFacts, the United States Department of Education, Office for Civil Rights Data Collection (required by 20 U.S.C. 3413(c)(1)), the Gun Free Schools Act report (required by 20 U.S.C. 7961(d) and (e)), the Every Student Succeeds Act report cards (required by 20 U.S.C. 6311(h)(1) and (2)), and state reports on Bullying and Harassment (required by Section 1006.147, F.S.). SESIR data is also used to design and evaluate interventions to provide a safe learning environment. SESIR is not a law enforcement reporting system.

According to FDOE, SESIR contributes to safe schools in the following ways:

1. SESIR standardizes the definitions of serious crimes and violent acts in schools. This helps to provide continuity within a district and the state, and, in turn, allows for more accurate data to be collected. In turn, this transparency provides a clearer picture of what is happening at the school

¹² Indeed, district school superintendents are subject to penalties for the failure to comply with SESIR reporting requirements, including, but not limited to, the withholding of the superintendent's salary until reports are properly and timely filed. Section 1001.42(13(b) and Section 1001.51(12)(b), Florida Statutes.

¹³ The statute provides, that, in the event FDOE, via the Office of State Schools, notifies a school board that its superintendent has failed to carry out his or her duties as previously discussed, the school board must withhold the superintendent's salary until the situation is rectified.

level, and allows for more accurate funding and the setting of appropriate student safety related goals;

2. SESIR furnishes the data needed for a strong grant application to fund prevention programs and other interventions targeting school safety. The data are compiled and made available in an easy-to-read report at a school, district or state level. Schools then have a way of documenting ongoing progress and the outcome of all of the interventions.

The SESIR reporting system collects data on 26 different categories of disciplinary infractions. The updated SESIR categories are as follows¹⁴:

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|-------------------------------|------------------------------|--------------------------|-----------------------|
| • Aggravated Battery | • Alcohol | • Arson | • Bullying |
| • Burglary | • Major Disruption on Campus | • Drug Sale/Distribution | • Drug Use/Possession |
| • Fighting | • Harassment | • Hazing | • Homicide |
| • Kidnapping | • Grand Theft (\$750) | • Other Major Incidents | • Simple Battery |
| • Robbery | • Sexual Assault | • Sexual Battery | • Sexual Harassment |
| • Sexual Offenses (Other) | • Threat/Intimidation | • Tobacco | • Trespassing |
| • Criminal Mischief (\$1,000) | • Weapons Possession | | |

Each SESIR incident is ranked from I to IV based on the level of seriousness, with Level I being the least serious, and Level IV, the most. In general, when more than one offense occurs, the most serious offense according to the prescribed level is to be reported.

In addition to tracking the above-listed infractions, when a SESIR incident occurs, districts must also track and report related elements, including: 1) Alcohol-related; 2) Bullying-related; 3) Drug-related; 4) Gang-related; 5) Hate crime-related;

¹⁴ The following categories were changed as of December 14, 2022: Larceny/Theft was replaced with Grand Theft (\$750), Physical Attack was replaced with Simple Battery, and Vandalism was replaced with Criminal Mischief (\$1,000). Some definitions have also changed and can be found at FAC 6A-1.0017 or through the following links: <https://sesir.org/Media/Files/poster%202122.pdf> or <https://www.fldoe.org/safe-schools/sesir-discipline-data/>

6) Hazing-related; 7) Injury-related; 8) Vaping-related, and; 9) Weapon-related. Districts must also report whether law enforcement was involved.

The Florida Department of Education website contains many resources to assist districts in understanding SESIR. These resources contain free training and contact information for SESIR related questions. Districts are encouraged to familiarize themselves with this website to ensure that staff are appropriately trained and that districts are reporting the most accurate data required by the State.

B. SESIR Reporting

Our review of the documentation provided us suggests that the Superintendent and her administration have engaged in robust action with respect to ensuring compliance with all SESIR reporting requirements, including the timely reporting of SESIR incident data to law enforcement as required. In July of 2019, The Superintendent, via correspondence to the Office of State Schools, informed FDOE of the District's failure to correctly report approximately 2,100 instances of student offenses. The error was due to the District's failure to assign a Central Communication Report (CCR) number. The Superintendent noted that certain corrective actions had been taken to mitigate against any future reporting discrepancies; specifically:

- Update of the FOCUS student information system to require entry of correct code information relative to SESIR and mandatory reporting of law enforcement offenses.
- Mandatory SESIR training for entering and validating SESIR information.
- Duval County School Police Department training re: CCR numbers for all mandatory offence reporting.
- MOU/Interagency Agreement between the District, the School Police Department and the Duval County Sheriff's office re: required CCR Numbers.
- Development of a monthly validation process for SESIR data entry.
- Monitoring of Charter School SESIR data entry by School Choice staff.

Importantly, the Superintendent, in her correspondence to the Office of Safe Schools, affirmatively noted the District's need for reliance on FDOE regarding compliant SESIR reporting.

In March of 2021, the District received additional SESIR training from the Office of Safe Schools for its principals and assistant principals as well as school

police. Following up on that training, heading into the 2021-2022 school year, the Superintendent, on June 29, 2021, again wrote to the Office of State Schools as part of the “collaborative engagement” between the District and FDOE. The Superintendent specifically requested a “comprehensive external review” of the District’s SESIR training, monitoring and reporting procedures so as to determine if “any additional actions” were needed. Director Hay wrote back to the Superintendent on July 6, 2021, noting that FDOE had adopted a new rule making SESIR reporting a monthly requirement and cited the same as assisting both the districts and the Office of State Schools in identifying any reporting anomalies, making necessary corrections and highlighting progress and success. Director Hay further noted that, while his office did not have a “formal protocol” for conducting external reviews for SESIR reporting, he did offer a team from his office to meet with District staff for a “joint review of processes.”

Superintendent Greene again wrote Director Hay on December 1, 2021, welcoming “continued feedback from OSS regarding the reports submitted this school year as well as opportunities for continued process improvements.” She further requested availability for an Office of Safe School’s team to meet with District staff to “conduct a joint review of our processes and to provide feedback regarding current SESIR reporting.” Due to logistical issues with the Office of Safe Schools, that meeting did not occur until May 19, 2022.

As previously noted, on August 29, 2022, Office of State Schools Director Hay wrote Superintendent Greene following up on the release of the Grand Jury’s Final Report and Presentment. Thereafter, the Office of State Schools, on September 8, 2022, sent a team which met a number of different District administrators.

Our review of the correspondence between the District Administration and the Office of Safe Schools, as well as documents supporting the continued training and monitoring of SESIR reporting, including oversight and review of SESIR data during and after submission of the same, shows clear evidence of substantial compliance efforts by the District; especially since July of 2019. Moreover, the District has in place appropriate interagency agreements between it, the District’s Police Department and the Duval County Sheriff’s office, to ensure accurate reporting of infractions to law enforcement.

The District has also compiled data from 2016-2021 regarding total SESIR incidents reported and incidents reported to law enforcement. The data compares the District’s reporting of these two categories as compared to total statewide reporting, and also to other large county school districts in Florida. That data shows that the

District was a clear outlier in the 2016-2017, 2017-2018, and 2018-2019 school year reporting cycles both in comparison to statewide data and as to other large school districts.¹⁵ For 2016-2017 only 8% of total SESIR incidents were reported to law enforcement. For 2017-2018, only 9% were reported to law enforcement. Statewide, 34% and 33% of SESIR incidents, respectively, were reported to law enforcement for those two data cycles. For the 2018-2019 reporting cycle, the District's percentage of incidents reported to law enforcement almost doubled to 17%; however, this was still less than half of the 35% statewide number.

For the 2019-2020 and 2020-2021 reporting cycles, the District's percentage of SESIR incidents reported to law enforcement increased to levels entirely consistent with statewide data. For 2019-2020, the District reported 35% of its total SESIR incidents to law enforcement equaling the 35% reported statewide, and for 2020-2021, the District reported 32% as compared to the statewide percentage of 31%. We suggest this upward trend in reporting and alignment with statewide numbers is an indicator of the District's focus on total SESIR compliance, including accurate and consistent reporting of SESIR incidents to law enforcement.

We do note that the total number of SESIR incidents, both with respect to the District as well as statewide, has decreased fairly consistently over the entire 2016-2021 period. For example, statewide, for 2018-2019, there were 84,795 total SESIR incidents; the highest number of statewide incidents for any reporting cycle. For 2020-2021, again on a statewide basis, that number fell by about 40% to 50,971 total SESIR incidents. Similarly, for the District, there were 5,343 SESIR incidents in 2018-2019 and that number decreased to 3,287 for 2020-2021; an approximate 40% decrease. Certainly, we would expect that the FDOE and, particularly, the Office of State Schools, will continue to monitor SESIR data as it is submitted by all school district and they will be able to offer their expertise on whether the data reflects increased understanding and compliance and reporting. Here, the important conclusion is that it appears that the District's total number of SESIR incidents reported as well as the percentage of those incidents reported to law enforcement as required, appears to be consistent with statewide averages and as to other similarly situated large school districts.

¹⁵ We note that Dr. Greene began her tenure as Superintendent in July of 2018.

IV. Recommendations Moving Forward

As previously stated, our review suggests a serious commitment by the District Administration to accurate and timely reporting of SESIR data, including reporting to law enforcement. Moreover, there has been a substantial effort, especially since 2019, to solicit and actively engage the Office of Safe Schools in a collaborative effort of programmatic review and compliance training. Clearly, continued and sustained training of front-line school administrators and school police personnel is vital to maintaining compliance.

Outside of collected data, measurement of compliance may be further assured by some form of compliance audit, review and confirmation testing. This would entail in-person interviews with a random statistical sampling of the District's school personnel (administrators and law enforcement) where interview subjects would provide their understanding of their particular obligations and processes necessary to ensure accurate reporting of incidents including engagement of law enforcement. Additionally, random singular incident data documentation would be pulled and reviewed for confirmatory testing as part of the interview process with administrators and police personnel. An appropriate protocol would be established with District input and assistance for subject interviews and singular incident data review and confirmatory testing. The interview and data review process would be conducted independently of the District Administration in order to avoid any unintended bias. Certainly, the feedback from such a process would be valuable to the District's compliance efforts.

Importantly, while such an effort would be helpful to the District, we are mindful that it is ultimately the FDOE Office of Safe Schools that determines school district compliance. Section 1001.212 (8), Florida Statutes provides that the Office of State Schools, "shall review and evaluate school district reports to ensure compliance with reporting requirements." As previously noted, Office of State Schools Director Tim Hay, in correspondence with the Superintendent, on July 6, 2021, stated that his office did not have a "formal protocol for conducting external reviews specifically for SESIR reporting." Notwithstanding the Office of State Schools' own ability to conduct any external review of the District's SESIR reporting processes and compliance efforts, we suggest that it is critically important for the District to continue to engage FDOE regarding any and all compliance review activity. For example, FDOE may be able to provide technical assistance on developing appropriate interview and incident data review protocols and methodologies such that information gleaned from any independent compliance audit interviews is of maximum benefit to the District as well as FDOE. At the end

of the day, FDOE and the Office of State Schools are the subject matter experts regarding the collection of SESIR data and the process of collecting and reporting the same including the accuracy of that data from the moment a reportable incident occurs on a school campus. We are, of course, happy to assist the District in furthering meaningful compliance audit and review and testing actions if desired.

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