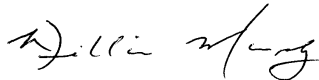






TO: Higher Education Committee

FROM: William P. Murphy 

SUBJECT: Proposed Amendment to Sections 52.21, 57-4.5, and 80-1.13 of the Regulations of the Commissioner of Education Relating to Removing the Face-to-Face Instruction Requirement for the Dignity for All Students Act (DASA) Training

DATE: October 7, 2021

AUTHORIZATION(S):  

SUMMARY

Issue for Decision

Should the Board of Regents adopt the proposed amendment to sections 52.21, 57-4.5, and 80-1.13 of the Regulations of the Commissioner of Education relating to removing the face-to-face instruction requirement for the Dignity for All Students Act (DASA) training?

Reason(s) for Consideration

Review of policy.

Proposed Handling

The proposed amendment is submitted to the Higher Education Committee for discussion and to the full Board for adoption as an emergency rule at its October 2021 meeting. A copy of the proposed amendment is included (Attachment A), and a Statement of Facts and Circumstances which necessitate emergency action is included (Attachment B).

Procedural History

A Notice of Proposed Rule Making will be published in the State Register on November 3, 2021 for a 60-day public comment period. A Notice of Emergency Adoption will be published in the State Register on January 19, 2022. Supporting materials are available upon request from the Secretary to the Board of Regents.

Background Information

Education Law §14, also known as the Dignity for All Students Act (DASA), requires prospective school professionals who apply for a certificate or license to complete training on the social patterns of harassment, bullying (including cyberbullying), and discrimination, including, but not limited to, those acts based on a person's actual or perceived race, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender or sex; the identification and mitigation of harassment, bullying and discrimination; and strategies for effectively addressing problems of exclusion, bias, and aggression in educational settings.

For certification, candidates can complete the DASA training as part of a New York State registered educator preparation program or through a workshop offered by a provider approved by the Department. At its February 2021 meeting, the Board of Regents took emergency action to amend the Commissioner's regulations to permit the six-clock-hour DASA training to be conducted entirely online, and no longer include at least three clock hours through face-to-face instruction, during the time period of the State of Emergency declared by the Governor pursuant to an Executive Order for the COVID-19 crisis.

At the time of the June 2021 Board of Regents meeting, it was unclear exactly how long the Executive Order declaring the State of Emergency would remain in effect. Therefore, to provide some certainty in this regard, the Board of Regents took emergency action to adopt revised proposed amendments to the Commissioner's regulations to continue permitting the six-clock-hour DASA training to be conducted entirely online through December 31, 2021. As of June 25, 2021, the State of Emergency was no longer in effect. These amendments were permanently adopted by the Board of Regents at their September 2021 meeting.

Educator preparation program instructors have expressed an interest in the DASA training being able to be conducted entirely online on a permanent basis, citing candidates' greater accessibility to the training. During the COVID-19 pandemic, educator preparation programs and other approved DASA training providers successfully offered the training entirely online. The technology available for offering training online has improved significantly since the DASA training requirement for certification went into effect on December 31, 2013, eliminating the need for at least three of the six clock hours for the training to be delivered face-to-face.

Given the new online technologies and successful offering of DASA training entirely online, the Department now proposes to remove the DASA training requirement that at least three hours must be conducted through face-to-face instruction. Removing this requirement will provide candidates and approved DASA training providers with more flexibility to complete and offer the training, respectively. The DASA training would continue to be 6 clock hours.

Related Regents Items

September 2021: [Proposed Amendment to Sections 52.21, 57-4.5, and 80- 1.13 of the Regulations of the Commissioner of Education Relating to Permitting the Dignity for All Students Act \(DASA\) Training to Be Provided Entirely Online Due to the COVID-19 Crisis](https://www.regents.nysed.gov/common/regents/files/921brca4.pdf)

(<https://www.regents.nysed.gov/common/regents/files/921brca4.pdf>)

June 2021: [Proposed Amendment to Sections 52.21, 57-4.5, and 80- 1.13 of the Regulations of the Commissioner of Education Relating to Permitting the Dignity for All Students Act \(DASA\) Training to Be Provided Entirely Online Due to the COVID-19 Crisis](https://www.regents.nysed.gov/common/regents/files/621hea1.pdf)

(<https://www.regents.nysed.gov/common/regents/files/621hea1.pdf>)

February 2021: [Proposed Amendments to Sections 52.3, 52.21, 57-4.5, 70.4, 74.6, 75.2, 75.5, 76.2, 79-9.3, 79-10.3, 79-11.3, 79-12.3, 801.13, 80-1.5, 80-3.15, 80-4.3, 83.5, 87.2, 87.5, 100.2, 100.4, 100.5, 100.6, 100.10, 100.21, 119.1, 119.5, 125.1, 151-1.4, 1542.3, 175.5, 200.4, 200.5, 200.7, 200.20 and 275.8 and Addition of Section 279.15 to the Regulations of the Commissioner of Education Relating to Addressing the COVID-19 Crisis](https://www.regents.nysed.gov/common/regents/files/221brca6.pdf)

(<https://www.regents.nysed.gov/common/regents/files/221brca6.pdf>)

Recommendation

It is recommended that the Board of Regents take the following action:

VOTED: That Sections 52.21, 57-4.5, and 80-1.13 of the Regulations of the Commissioner of Education be amended, as submitted, as an emergency measure, effective January 1, 2022, upon a finding by the Board of Regents that such action is necessary for the preservation of the general welfare and public health to continue allowing the DASA training to be provided entirely online after December 31, 2021 until the proposed rule becomes effective on March 2, 2022.

Timetable for Implementation

If adopted as an emergency measure at the October 2021 Regents meeting, the proposed amendment will become effective as an emergency rule on January 1, 2022. It is anticipated that the proposed amendments will be presented for permanent adoption at the February 2022 Regents meeting, after publication of the proposed amendment in the State Register and expiration of the 60-day public comment period required under the State Administrative Procedure Act. If adopted at the February meeting, the proposed amendment will become effective on March 2, 2022.

AMENDMENT TO THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to sections 14, 101, 207, 208, 305, 308, 3001, 3004 and 3009 of the Education Law.

1. Paragraph (5) of subdivision (a) of section 52.21 of the Regulations of the Commissioner of Education shall be amended to read as follows:

(5) All registered teacher education programs leading to certification in the classroom teaching service, school service, or administrative and supervisory service shall provide six clock hours[, of which at least three hours must be conducted through face-to-face instruction,] of coursework or training in the prevention and intervention of harassment, bullying and discrimination[, except that the six clock hours of coursework or training may be provided entirely online through December 31, 2021 in response to the State of emergency declared by the Governor pursuant to an Executive Order for the COVID-19 crisis]. Such coursework or training shall include, training on the social patterns of harassment, bullying and discrimination, as defined in section 11 of the Education Law, including but not limited to those acts based on a person's actual or perceived race, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender or sex; the identification and mitigation of harassment, bullying and discrimination; and strategies for effectively addressing problems of exclusion, bias and aggression in educational settings.

2. Item (xiii) of subclause (1) of clause (c) of subparagraph (ii) of paragraph (2) of subdivision (b) of section 52.21 of the Regulations of the Commissioner of Education shall be amended to read as follows:

(xiii) means for the prevention of and intervention in harassment, bullying and discrimination in accordance with section 14 of the Education Law. Such study shall include six clock hours[, of which at least three hours must be conducted through face-to-face instruction,] of course work or training on the social patterns of harassment, bullying and discrimination; as defined in section 11 of the Education Law, including but not limited to those acts based on a person's actual or perceived race, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender or sex; the identification and mitigation of harassment, bullying and discrimination; and strategies for effectively addressing problems of exclusion, bias and aggression in educational settings[, except that the six clock hours of coursework or training may be provided entirely online through December 31, 2021 in response to the State of emergency declared by the Governor pursuant to an Executive Order for the COVID-19 crisis].

3. Item (X) of subitem (A) of item (i) of subclause (1) of clause (a) of subparagraph (xiii) of paragraph (3) of subdivision (b) of section 52.21 of the Regulations of the Commissioner of Education shall be amended to read as follows:

(X) means for the prevention of and intervention harassment, bullying and discrimination in accordance with section 14 of the Education Law. Such study shall include six clock hours[, of which at least three hours must be conducted through face to-face instruction,] of course work or training on the social patterns of harassment, bullying and discrimination, as defined in section 11 of the Education Law, including but not limited to those acts based on a person's actual or perceived race, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation,

gender or sex; the identification and mitigation of harassment, bullying and discrimination; and strategies for effectively addressing problems of exclusion, bias and aggression in educational settings[, except that the six clock hours of coursework or training may be provided entirely online through December 31, 2021 in response to the State of emergency declared by the Governor pursuant to an Executive Order for the COVID-19 crisis], and

4. Subitem (J) of item (iv) of subclause (2) of clause (b) of subparagraph (xvii) of paragraph (3) of subdivision (b) of section 52.21 of the Regulations of the Commissioner of Education shall be amended to read as follows:

(J) means for the prevention of and intervention in harassment, bullying and discrimination in accordance with section 14 of the Education Law. Such study shall include six clock hours[, of which at least three hours must be conducted through face to-face instruction,] of course work or training on the social patterns of harassment, bullying and discrimination, as defined in section 11 of the Education Law, including but not limited to those acts based on person's actual or perceived race, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender or sex; the identification and mitigation of harassment, bullying and discrimination; and strategies for effectively addressing problems of exclusion, bias and aggression in educational settings[, except that the six clock hours of coursework or training may be provided entirely online through December 31, 2021 in response to the State of emergency declared by the Governor pursuant to an Executive Order for the COVID-19 crisis].

5. Clause (c) of subparagraph (iv) of paragraph (1) of subdivision (c) of section 52.21 of the Regulations of the Commissioner of Education shall be amended to read as follows:

(c) Programs shall ensure that candidates complete six clock hours[, of which at least three hours must be conducted through face-to-face instruction,] of coursework or training on the social patterns of harassment, bullying and discrimination[, a], in accordance with the requirements of section 14 of the Education Law[, except that the six clock hours of coursework or training may be provided entirely online through December 31, 2021 in response to the State of emergency declared by the Governor pursuant to an Executive Order for the COVID-19 crisis].

6. Clause (m) of subparagraph (v) of paragraph (7) of subdivision (c) of section 52.21 of the Regulations of the Commissioner of Education shall be amended to read as follows:

(m) ensure that candidates complete six clock hours[, of which at least three hours must be conducted through face-to-face instruction,] of coursework or training on the social patterns of harassment, bullying and discrimination, in accordance with the requirements of section 14 of the Education Law[, except that the six clock hours of coursework or training may be provided entirely online through December 31, 2021 in response to the State of emergency declared by the Governor pursuant to an Executive Order for the COVID-19 crisis];

7. Subdivision (a) of section 57-4.5 of the Regulations of the Commissioner of Education shall be amended to read as follows:

(a) A provider, at a minimum, shall offer the syllabus prepared by the department and demonstrate that at least three of the six clock hours shall be conducted through face-to-face instruction, except that the six clock hours of coursework or training may be provided entirely online through December 31, 2021 in response to the State of emergency declared by the Governor pursuant to an Executive Order for the COVID-19 crisis. However], however, nothing in this section shall preclude providers from offering additional coursework or training which exceeds, or expands upon, the six hour syllabus prescribed by the department.

8. Section 80-1.13 of the Regulations of the Commissioner of Education shall be amended to read as follows:

All candidates for a certificate or license valid for an administrative or supervisory service, classroom teaching service or school service who apply for a certificate or license on or after December 31, 2013, shall have completed at least six clock hours[, of which at least three hours must be conducted through face-to-face instruction,] of course work or training in harassment, bullying and discrimination prevention and intervention, as required by section 14 the Education Law, which is provided by a registered program leading to certification pursuant to section 52.21 of this Title or other approved provider pursuant to Subpart 57-4 of this Title[, except that candidates may complete the minimum six clock hours of course work or training entirely online through December 31, 2021 in response to the State of emergency declared by the Governor pursuant to an Executive Order for the COVID-19 crisis].

STATEMENT OF FACTS AND CIRCUMSTANCES WHICH NECESSITATE
EMERGENCY ACTION

Education Law §14, also known as the Dignity for All Students Act (DASA), requires prospective school professionals who apply for a certificate or license to complete training on the social patterns of harassment, bullying (including cyberbullying), and discrimination, including, but not limited to, those acts based on a person's actual or perceived race, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender or sex; the identification and mitigation of harassment, bullying and discrimination; and strategies for effectively addressing problems of exclusion, bias, and aggression in educational settings.

For certification, candidates can complete the DASA training as part of a New York State registered educator preparation program or through a workshop offered by a provider approved by the Department. At its February 2021 meeting, the Board of Regents took emergency action to amend the Commissioner's regulations to permit the six-clock-hour DASA training to be conducted entirely online, and no longer include at least three clock hours through face-to-face instruction, during the time period of the State of emergency declared by the Governor pursuant to an Executive Order for the COVID-19 crisis.

At the time of the June 2021 Board of Regents meeting, it was unclear exactly how long the executive order declaring the State of emergency would remain in effect. Therefore, to provide some certainty in this regard, the Board of Regents took emergency action to adopt revised proposed amendments to the Commissioner's

regulations to continue permitting the six-clock-hour DASA training to be conducted entirely online through December 31, 2021. As of June 25, 2021, the State of emergency was no longer in effect. These amendments were permanently adopted by the Board of Regents at their September 2021 meeting.

Educator preparation programs have expressed an interest in the DASA training being able to be conducted entirely online on a permanent basis, citing candidates' greater accessibility to the training. During the COVID-19 pandemic, educator preparation programs and other approved DASA training providers successfully offered the training entirely online. The technology available for offering training online has improved significantly since the DASA training requirement for certification went into effect on December 31, 2013, eliminating the need for at least three of the six clock hours for the training to be delivered face-to-face.

Given the new online technologies and successful offering of DASA training entirely online, the Department now proposes to remove the DASA training requirement that at least three hours must be conducted through face-to-face instruction. Removing this requirement will provide candidates and approved DASA training providers with more flexibility to complete and offer the training, respectively. The DASA training would continue to be 6 clock hours.

Since the Board of Regents meets at fixed intervals, the earliest the proposed amendment could be adopted by regular (nonemergency) action after expiration of the 60-day public comment period provided for in the State Administrative Procedure Act (SAPA) sections 201(1) and (5) would be the February 2022 Regents meeting. Furthermore, pursuant to SAPA 203(1), the earliest effective date of the proposed rule,

if adopted at the October meeting, would be March 2, 2022, the date the Notice of Adoption would be published in the State Register.

Therefore, emergency action is necessary at the October 2021 meeting for the preservation of the general welfare and public health to continue allowing the DASA training to be provided entirely online after December 31, 2021 until the proposed rule becomes effective on March 2, 2022. Without the emergency action, the DASA training would need to include at least three clock hours through face-to-face instruction between January 1, 2022 and March 1, 2022. This change in training format for two months would be difficult for approved DASA training providers, especially during the COVID-19 pandemic.

It is anticipated that the proposed rule will be presented to the Board of Regents for adoption as a permanent rule at its February 2022 meeting, which is the first scheduled meeting after expiration of the 60-day public comment period mandated by SAPA for State agency rule making.