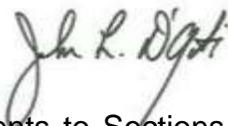




TO: P-12 Education Committee

FROM: John L. D'Agati 

SUBJECT: Proposed Amendments to Sections 100.2 and 119.6 of the Regulations of the Commissioner of Education Relating to the Implementation of the Crown Act

DATE: December 3, 2020

AUTHORIZATION(S):  

SUMMARY

Issue for Discussion

Should the Board of Regents amend Sections 100.2 and 119.6 of the Regulations of the Commissioner of Education relating to the implementation of the Crown Act?

Reason(s) for Consideration

Required by Statute (L. 2019 Ch. 95).

Proposed Handling

The proposed amendment will be presented to the P12 Education Committee for discussion at its December 2020 meeting. A copy of the proposed amendment is attached.

Procedural History

A Notice of Proposed Rule Making will be published in the State Register on December 30, 2020. Supporting materials are available upon request to the Secretary of the Board of Regents.

Background Information

Chapter 95 of the Laws of 2019 (Chapter 95), also known as the Crown Act, amended the Dignity for All Students Act (DASA) contained in Article 2 of the Education Law, as well as the Human Rights Law contained in Article 15 of the Executive Law. The purpose of the Crown Act is to prohibit race discrimination based on natural hair or hairstyles. The Crown Act defines the term "race" to include traits historically associated

with race, including but not limited to, hair texture and protective hairstyles. Additionally, the Crown Act defines the term “protective hairstyles” as including, but not limited to, such hairstyles as braids, locks, and twists.

The Crown Act addresses potential instances of discrimination against students in areas of access to school, participation in activities, and inclusion for opportunities. Students have experienced exclusion, punishment, and harassment from school administrators, faculty, and other students regarding their natural hair, treated or untreated hairstyles such as cornrows, twists, braids, Bantu knots, fades, Afros, and/or the right to keep hair in an uncut or untrimmed state, hair texture, and protective styles.

New York is the second state to pass a law to protect natural hair or hairstyles. New York Legislators supported the introduction of the Crown Act based upon reported incidents from across the country demonstrating the impact of hair discrimination on students:

- A high school wrestler was forced to cut his hair or forfeit a wrestling match in New Jersey;
- A 6-year-old boy in Florida was turned away from a private Christian academy on his first day of school because his hair extended below his ears; and
- A New Orleans-area girl was sent home at the start of the school year from a Catholic school for wearing braids.

In 2010, the Dignity for All Students Act¹ (DASA) added a new Article 2 to the Education Law to require, among other things, that school districts create policies and guidelines to be used in school training programs to discourage harassment, bullying, and/or discrimination and to enable school personnel to prevent and respond to discrimination or harassment. DASA became effective on July 1, 2012, and was later amended to include cyberbullying, effective July 1, 2013. Subsequently, the Department worked with key stakeholders through the DASA Task Force to develop and implement guidance and regulations to assist schools in implementing the provisions of the law. Since the adoption of Commissioner’s regulations to implement DASA, the Department has worked to provide training to the field, updates to the DASA website, and several guidance documents. Additionally, in April 2018, the Department amended Commissioner’s regulation §100.2(kk)(1) to include illustrative examples of the types of incidents of harassment, bullying and/or discrimination which must be reported to the principal, superintendent, or designee when reported to or witnessed by a school employee.

The proposed amendments to sections 100.2 and 119.6 of the Commissioner’s regulations are necessary to implement the provisions of the Crown Act. The proposed amendment to the DASA provisions in section 100.2(kk) of the Commissioner’s regulations adds definitions for the terms “race” and “protective hairstyle” consistent with the Crown Act. Additionally, section 100.2(kk) is amended to provide additional illustrative

¹ Chapter 482 of the Laws of 2010

examples of discrimination based on natural hair or hairstyles. Furthermore, additional provisions in sections 100.2 and 119.6 of the Commissioner's regulations are amended to make reference to the newly added definitions of "race" and "protective hairstyle."

DASA continues to be a powerful tool used to address bullying, discrimination, and harassment in our schools and to ensure that all students are educated in a safe and supportive school environment. However, the issues faced by students and schools in this area continue to evolve. The Department is committed to working with stakeholders to ensure that all students have the opportunity to learn and to attend school free from bullying, harassment, and/or discrimination. The Department will work with the Girls of Color Work Group, to create guidance to schools on identifying, investigating, addressing, and preventing DASA incidents of discrimination based on natural hair and protective hairstyles.

Related Regents Items

October 2013: [Safe Schools Task Force](https://www.regents.nysed.gov/common/regents/files/1013p12d1%5B1%5D.pdf)
(https://www.regents.nysed.gov/common/regents/files/1013p12d1%5B1%5D.pdf)

June 2014: [Safe Schools Task Force Update](http://www.regents.nysed.gov/common/regents/files/614p12d1.pdf)
(http://www.regents.nysed.gov/common/regents/files/614p12d1.pdf)

October 2015: [The NYS Safe Schools Task Force: Status Update](https://www.regents.nysed.gov/common/regents/files/meetings/Oct%202015/1015p12d1.pdf)
(https://www.regents.nysed.gov/common/regents/files/meetings/Oct%202015/1015p12d1.pdf)

May 2016: [Violent and Disruptive Incident Reporting and Calculating the School Violent Index](http://www.regents.nysed.gov/common/regents/files/516p12d1.pdf)
(http://www.regents.nysed.gov/common/regents/files/516p12d1.pdf)

September 2016: [Proposed Amendment of Section 100.2\(gg\) of the Commissioner's Regulations relating to the Uniform Violent and Disruptive Incident Reporting System \(VADIR\)](http://www.regents.nysed.gov/common/regents/files/916p12d2.pdf)
(http://www.regents.nysed.gov/common/regents/files/916p12d2.pdf)

May 2018: [Proposed Amendment to Section 100.2\(kk\)\(1\) of the Commissioner's Regulations Relating to Reports of Incidents of Harassment, Bullying and/or Discrimination Pursuant to the Dignity for All Students Act](https://www.regents.nysed.gov/common/regents/files/518p12a4.pdf)
(https://www.regents.nysed.gov/common/regents/files/518p12a4.pdf)

July 2018: [Proposed Amendment to Section 100.2\(kk\)\(1\) of the Commissioner's Regulations Relating to Reports of Incidents of Harassment, Bullying, and/or Discrimination Pursuant to the Dignity for All Students Act](http://www.regents.nysed.gov/common/regents/files/718brca11.pdf)
(http://www.regents.nysed.gov/common/regents/files/718brca11.pdf)

September 2018: [Proposed Amendment to Section 100.2\(kk\)\(1\) of the Commissioner's Regulations Relating to Reports of Incidents of Harassment, Bullying, and/or Discrimination Pursuant to the Dignity for All Students Act](https://www.regents.nysed.gov/common/regents/files/918p12a4.pdf)
(<https://www.regents.nysed.gov/common/regents/files/918p12a4.pdf>)

Recommendation

Not applicable.

Timetable for Implementation

It is anticipated that the proposed rule will be presented to the Board of Regents for adoption at its April 2021 meeting, after publication of the proposed rule in the State Register and expiration of the 60-day public comment period required under the State Administrative Procedure Act. If adopted at the April meeting, the proposed rule will become effective as a permanent rule on April 28, 2021.

AMENDMENT TO THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to sections 12, 101, 112, and 207 of the Education Law and Chapter 95 of the Laws of 2019.

1. Subparagraph (x) of paragraph (1) of subdivision (kk) of section 100.2 of the Regulations of the Commissioner of Education is amended to read as follows:

(x) Race shall include traits historically associated with race, including, but not limited to, hair texture and protective hairstyles.

(xi) Protective hairstyles shall include, but not be limited to, such hairstyles as braids, locks, and twists.

(xi) For purposes of this section, *a report of harassment, bullying, and/or discrimination* means a written or oral report of harassment, bullying, and/or discrimination that could constitute a violation of the Dignity for All Students Act (article 2 of the Education Law). Such a report may include, but is not limited to, the following examples:

(a) a report regarding the denial of access to school facilities, functions, opportunities or programs including, but not limited to, restrooms, changing rooms, locker rooms, and/or field trips, based on a person's actual or perceived race, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender (which includes gender identity and/or expression), or sex; or

(b) a report regarding application of a dress code, specific grooming or appearance standards that is based on a person's actual or perceived race, color,

weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender (which includes gender identity and/or expression), or sex; or

(c) a report regarding the use of name(s) and pronoun(s) or the pronunciation of name(s) that is based on a person's actual or perceived race, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender (which includes gender identity and/or expression), or sex; or

(d) a report regarding the punishment, differential treatment or humiliation of a student, or exclusion of a student from a school function, athletic team or school yearbook, based on hair texture or protective hairstyle, or the request to alter or actual alteration of a protective hairstyle; or

(e) a report regarding any other form of harassment, bullying and/or discrimination, based on a person's actual or perceived race, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender (which includes gender identity and/or expression), or sex.

2. Paragraph (2) of subdivision (c) of section 100.2 of the Regulations of the Commissioner of Education is amended to read as follows:

(2) for all public school students, instruction that supports development of a school environment free of harassment, bullying, and/or discrimination as required by the Dignity For All Students Act (article 2 of the Education Law), with an emphasis on discouraging acts of harassment, bullying, and/or discrimination, including but not limited to instruction that raises students' awareness and sensitivity to harassment, bullying and/or discrimination based on a person's actual or perceived race as defined in Education Law section 11(9), color, weight, national origin, ethnic group, religion,

religious practice, disability, sexual orientation, gender, or sex, and instruction in the safe, responsible use of the Internet and electronic communications; provided that in public schools other than charter schools, such instruction shall be provided as part of a component on civility, citizenship and character education in accordance with section 801-a of the Education Law;

3. Subdivision (k) of section 100.2 of the Regulations of the Commissioner of Education is amended to read as follows:

(k) *Nondiscrimination in curricular and extracurricular activities.* No student shall be denied membership or participation, on the basis of race as defined in Education Law section 11(9) and subdivision (kk) of this section, sex, marital status, color, religion, national origin or disability, in any program or activity which is included in a school program of curricular or extracurricular activities, provided that:

- (1) ...;
- (2) ...;
- (3) ...; and
- (4)

4. Subclause (6) of clause (b) of subparagraph (ii) of paragraph (2) of subdivision I of section 100.2 of the Regulations of the Commissioner of Education is amended to read as follows:

(6) Such conduct shall include, but is not limited to acts based on a person's actual or perceived race as defined in Education Law section 11(9) and subdivision (kk) of this section, color, weight, national origin, ethnic group, religion, religious practices, disability, sexual orientation, gender as defined in Education Law Section 11(6), or sex;

provided that nothing in this subdivision shall be construed to prohibit a denial of admission into, or exclusion from, a course of instruction based on a person's gender that would be permissible under Education Law sections 3201-a or 2854(2)(a) and Title IX of the Education Amendments of 1972 (20 U.S.C. section 1681, et seq.), or to prohibit, as discrimination based on disability, actions that would be permissible under section 504 of the Rehabilitation Act of 1973;

5. Clause (d) of subparagraph (vi) of clause (1) of subdivision (gg) of section 100.2 of the Regulations of the Commissioner of Education is amended to read as follows:

(d) Material incident of harassment, bullying, and/or discrimination. A single verified incident or a series of related verified incidents where a student is subjected to harassment, bullying and/or discrimination by a student and/or employee on school property or at a school function. In addition, such term shall include a verified incident or series of related incidents of harassment or bullying that occur off school property, as defined in subparagraph (kk)(1)(viii) of this section, such conduct shall include, but is not limited to, threats, intimidation or abuse based on a person's actual or perceived race as defined in Education Law section 11(9) and subdivision (kk) of this section, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender, or sex; provided that nothing in this subdivision shall be construed to prohibit a denial of admission into, or exclusion from, a course of instruction based on a person's gender that would be permissible under Education Law sections 3201-a or 2854(2)(a) and title IX of the Education Amendments of 1972 (20 U.S.C. section

1681, et seq.), or to prohibit, as discrimination based on disability, actions that would be permissible under section 504 of the Rehabilitation Act of 1973.

6. Subparagraph (vii) of paragraph (1) of subdivision (j) of section 100.2 of the Regulations of the Commissioner of Education is amended to read as follows:

(vii) Discrimination means discrimination against any student by a student or students and/or an employee or employees on school property or at a school function including, but not limited to, discrimination based on a person's actual or perceived race as defined in Education Law section 11(9) and subdivision (kk) of this section, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender or sex.

7. Clause (d) of subparagraph (viii) of paragraph (1) of subdivision (j) of section 100.2 of the Regulations of the Commissioner of Education is amended to read as follows:

(d) For purposes of this subdivision, the term threats, intimidation or abuse shall include verbal and non-verbal actions. Acts of harassment or bullying shall include, but not be limited to, acts based on a person's actual or perceived race as defined in Education Law section 11(9) and subdivision (kk) of this section, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender, or sex.

8. Subparagraph (i) of paragraph (3) of subdivision (j) of section 100.2 of the Regulations of the Commissioner of Education is amended to read as follows:

(i) raise awareness and sensitivity to potential acts of harassment, bullying, and/or discrimination directed at students that are committed by students and/or school

employees on school property or at a school function, or off school property pursuant to subclause (1)(viii)(c)(3) of this subdivision; including, but not limited to, harassment, bullying and/or discrimination based on a person's actual or perceived race as defined in Education Law section 11(9) and subdivision (kk) of this section, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender, or sex. Such training shall address the social patterns of harassment, bullying and/or discrimination, the identification and mitigation of such acts, and strategies for effectively addressing problems of exclusion, bias and aggression in educational settings;

9. Subparagraph (iii) of paragraph (4) of subdivision (jj) of section 100.2 of the Regulations of the Commissioner is amended to read as follows:

(iii) provided with training which addresses the social patterns of harassment, bullying and discrimination, including but not limited to those acts based on a person's actual or perceived race as defined in Education Law section 11(9) and subdivision (kk) of this section, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender, and sex;

10. Paragraph (6) of subdivision (a) of section 119.6 of the Commissioner's Regulations is amended to read as follows:

(6) Such conduct shall include, but is not limited to acts based on a person's actual or perceived race as defined in Education Law section 11(9) and subdivision (kk) of section 100.2 of this Subtitle, color, weight, national origin, ethnic group, religion, religious practices, disability, sexual orientation, gender as defined in Education Law section 11(6), or sex; provided that nothing in this subdivision shall be construed to

prohibit a denial of admission into, or exclusion from, a course of instruction based on a person's gender that would be permissible under Education Law section 3201-a or 2854(2)(a) and Title IX of the Education Amendments of 1972 (20 U.S.C. section 1681, et seq.), or to prohibit, as discrimination based on disability, actions that would be permissible under section 504 of the Rehabilitation Act of 1973;