

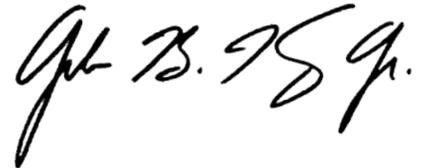


THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK / ALBANY, NY 12234

TO: The Honorable the Members of the Board of Regents
FROM: Ken Slentz 
SUBJECT: Amendment of section 100.2(c) of the Commissioner's Regulations, relating to instruction to implement the Dignity for All Students Act
DATE: July 2, 2012

AUTHORIZATION(S):





SUMMARY

Issue for Decision (Consent Agenda)

Should the Board of Regents adopt the proposed amendment of section 100.2(c) of the Commissioner's Regulations, relating to instruction to implement the Dignity for All Students Act ("Dignity Act")?

Reason(s) for Consideration

Required by Statute (L. 2010, Ch. 482).

Proposed Handling

The proposed amendment will be presented to the Board of Regents for adoption as an emergency action at the July 2012 meeting. A statement of the facts and circumstances which necessitate emergency action is attached.

Procedural History

An amendment to section 100.2(c) was discussed by the P-12 Education Committee at the January Regents meeting and adopted by the Board of Regents at the March Regents meeting, effective July 1, 2012 ("March amendment"). At the May Regents meeting, the Board of Regents adopted an emergency rule, effective May 22, 2012, which repealed the March amendment and substituted new language requiring

charter schools, in addition to public schools, to provide instruction that supports development of a school environment free of discrimination and harassment pursuant to the Dignity Act. A Notice of Emergency Adoption and Proposed Rule Making was published in the State Register on June 6, 2012. The proposed rule cannot be adopted until after expiration of a 45-day public comment period, which ends on July 23, 2012. However, the May emergency rule will expire on August 20, 2012. Therefore, a second emergency action is necessary at the July Regents meeting to ensure that the emergency rule remains continuously in effect until it can be presented for adoption at the September Regents meeting. A copy of the proposed emergency rule is attached. Supporting materials are available upon request from the Secretary to the Board of Regents.

Background Information

The Dignity Act added a new Article 2 to the Education Law (Ed.L. §§10 through 18), relating to Dignity for All Students, and amended Education Law §§801-a and 2801. The statute's provisions take effect on July 1, 2012.

The March amendment added language to section 100.2(c) of the Regulations to require that courses of instruction in civility, citizenship and character education provided pursuant to Education Law §801-a include instruction relating to awareness and sensitivity to discrimination or harassment and civility in the relations of people of different races, weights, national origins, ethnic groups, religions, religious practices, mental or physical abilities, sexual orientations, genders, and sexes. This was necessary to conform to §3 of the Dignity Act, which expanded §801-a to include such instruction relating to the principles of the Dignity Act. Because it has been the Department's interpretation since the enactment of §801-a in 2000 that charter schools are exempt from the required instruction on civility, citizenship and character education, the March amendment included language excluding charter schools from the requirements of §801-a.

However, concerns have been expressed by many parties, including the Assembly sponsor of the Dignity Act and the Dignity for All Students Task Force, that an exclusion of charter schools from any instructional requirement relating to prevention of harassment and discrimination would be inconsistent with the intent of Article 2, which is to afford all students in public schools an environment free of discrimination and harassment. It was pointed out that even if charter schools are not required to provide the component on civility, citizenship and character education prescribed under section 801-a, in order to carry out the intent of the Dignity Act, and protect the civil rights and the health and safety of charter school students, charter school students must receive instruction targeted at prevention of harassment and discrimination.

The Department finds that argument persuasive and recommends the regulation be amended to clarify that while charter schools are not required to provide a curriculum component on civility, citizenship and character education in accordance with §801-a, they must nonetheless provide instruction targeted at preventing harassment and

discrimination in charter schools to comply with the requirements of the Dignity Act and protect the civil rights and health and safety of their students.

Accordingly, the proposed amendment would require charter schools to provide instruction that supports development of a school environment free of discrimination and harassment, as required by the Dignity Act, including but not limited to instruction that raises awareness and sensitivity to discrimination or harassment based on a person's actual or perceived race, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender or sex.

Recommendation

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

VOTED: that the amendment of subdivision (c) of section 100.2 of the Regulations of the Commissioner of Education, which was adopted by the Board of Regents on March 20, 2012 and for which a Notice of Adoption was published in the State Register on April 11, 2012 (EDU-04-12-00002-A), is repealed, effective August 21, 2012, and it is further

VOTED: that subdivision (c) of section 100.2 of the Regulations of the Commissioner of Education be amended, as submitted, effective August 21, 2012, as an emergency action upon a finding of the Board of Regents that such action is necessary for the preservation of the general welfare in order to ensure that the emergency rule adopted at the May Regents meeting remains continuously in effect until the effective date of its permanent adoption at a subsequent Regents meeting, after expiration of the 45-day public comment period prescribed by the State Administrative Procedure Act.

Timetable for Implementation

The May emergency rule became effective on May 22, 2012 and will expire on August 20, 2012. If adopted at the July Regents meeting, the emergency rule will become effective on August 21, 2012. It is anticipated that the proposed amendment will be presented for adoption as a permanent rule at the September Regents meeting.

AMENDMENT OF THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to Education Law sections 101, 207, 305, 801-a and 2854 and Chapter 482 of the Laws of 2010.

1. The amendment of subdivision (c) of section 100.2 of the Regulations of the Commissioner of Education, which was adopted by the Board of Regents on March 20, 2012 and for which a Notice of Adoption was published in the State Register on April 11, 2012 (EDU-04-12-00002-A), is repealed, effective August 21, 2012.

2. Subdivision (c) of section 100.2 of the Regulations of the Commissioner of Education is amended, effective August 21, 2012, as follows:

(c) Instruction in certain subjects. Pursuant to articles 2, 17 and 65 of the Education Law, instruction in certain subjects in elementary and secondary school shall be provided as follows:

(1) for all students, instruction in patriotism and citizenship, as required by section 801 of the Education Law;

(2) for all public school students, instruction that supports development of a school environment free of discrimination and harassment, as required by the Dignity For All Students Act (article 2 of the Education Law), including but not limited to instruction that raises awareness and sensitivity to discrimination or harassment based on a person's actual or perceived race, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender or sex ; 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;

[(2)] (3) for all students in the eighth and higher grades, instruction in the history, meaning, significance and effect of the provisions of the Constitution of the United States and the amendments thereto, the Declaration of Independence, the Constitution of the State of New York and the amendments thereto, as required by section 801 of the Education Law;

[(3)] (4) for all students, health education regarding alcohol, drugs and tobacco abuse, as required by section 804 of the Education Law;

[(4)] (5) for all students, instruction in highway safety and traffic regulation, as required by section 806 of the Education Law;

[(5)] (6) for all students, instruction in fire drills and in fire and arson prevention, injury prevention and life safety education, as required by sections 807 and 808 of the Education Law. Such course of instruction shall include materials to educate children on the dangers of falsely reporting a criminal incident or impending explosion or fire emergency involving danger to life or property or impending catastrophe, or a life safety emergency;

[(6)] (7) for all students in grades one through eight, instruction in New York State history and civics as required by section 3204(3) of the Education Law;

[(7)] (8) for public school students, instruction relating to the flag and certain legal holidays, as required by section 802 of the Education Law;

[(8)] (9) for all public elementary school students, instruction in the humane treatment of animals and birds, as required by section 809 of the Education Law; and

[(9)] (10) for all public school students, instruction relating to the conservation of the natural resources of the State, as required by section 810 of the Education Law.

PROPOSED AMENDMENT OF SECTION 100.2(c) OF THE REGULATIONS OF THE COMMISSIONER OF EDUCATION PURSUANT TO EDUCATION LAW SECTIONS 101, 207, 305, 801-a AND 2854, AND CHAPTER 482 OF THE LAWS OF 2010, RELATING TO INSTRUCTION TO IMPLMENT THE DIGNITY FOR ALL STUDENTS ACT

STATEMENT OF FACTS AND CIRCUMSTANCES WHICH NECESSITATE EMERGENCY ACTION

The proposed amendment is necessary to implement the Dignity for All Students Act (L. 2010, Ch. 482) to ensure that all public school students, including those attending charter schools, are provided instruction that supports development of a school environment free of discrimination and harassment, as required by the Dignity Act, including but not limited to instruction that raises awareness and sensitivity to discrimination or harassment 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 proposed amendment was adopted as an emergency rule at the May Regents meeting, effective May 22, 2012. A Notice of Emergency Adoption and Proposed Rule Making was published in the State Register on June 6, 2012. Because the Board of Regents meets at fixed intervals, and generally does not meet in the month of August, the earliest the proposed amendment can be presented for permanent adoption, after expiration of the 45-day public comment period provided for in State Administrative Procedure Act (SAPA) section 202(1) and (5), is the September 10-11, 2012 Regents meeting. Furthermore, pursuant to SAPA, the earliest effective date of

the proposed amendment, if adopted at the September meeting, would be October 3, 2012, the date a Notice of Adoption would be published in the State Register. However, the May emergency action will expire on August 20, 2012, ninety days after its filing with the Department of State on May 22, 2012. A lapse in the effective date of the rule may disrupt the provision of instruction in the 2012-2013 school year that supports development of a school environment free of discrimination and harassment, as required by the Dignity for All Students Act.

Emergency action is therefore necessary for the preservation of the general welfare to ensure that the emergency rule adopted at the May 2012 Regents meeting remains continuously in effect until the effective date of its adoption as a permanent rule.

It is anticipated that the proposed rule will be presented to the Board of Regents for adoption as a permanent rule at their September 10-11, 2012 meeting, which is the first scheduled meeting after expiration of the 45 day public comment period mandated by the State Administrative Procedure Act.