




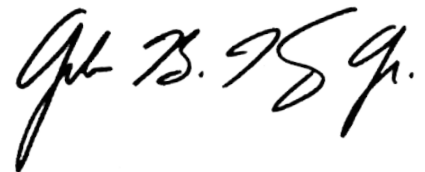
THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK / ALBANY, NY 12234

TO: P-12 Education Committee
FROM: Ken Slentz 
SUBJECT: Amendment of section 100.2(l) and Addition of section 119.6 of the Commissioner's Regulations, Relating to Codes of Conduct

DATE: March 12, 2012

AUTHORIZATION(S):





SUMMARY

Issue for Decision

Should the Board of Regents amend section 100.2(l) and add section 119.6 of the Commissioner's Regulations, relating to codes of conduct, 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 is being presented to the P-12 Education Committee for recommendation and to the Full Board for adoption at the March Regents meeting.

Procedural History

The proposed rule was discussed by the P-12 Education Committee at the January Regents meeting. A Notice of Proposed Rule Making was published in the State Register on January 18, 2012. In response to public comment, a nonsubstantial change has been made to the proposed rule to clarify that schools, school districts and BOCES that maintain websites are required to post their codes of conduct, and any updates and amendments, on the website. A copy of the proposed rule and an Assessment of Public Comment are attached. Supporting materials are available upon request from the Secretary to the Board of Regents.

Background Information

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

The proposed rule requires that school district and BOCES codes of conduct include provisions to comply with the Dignity Act. Specifically, the proposed rule requires codes of conduct to include:

- provisions prohibiting discrimination and harassment against any student by employees or students on school property or at a school function, that creates a hostile environment by conduct, with or without physical contact and/or by verbal threats, intimidation or abuse, of such a severe nature that: (1) has or would have the effect of unreasonably and substantially interfering with a student's educational performance, opportunities or benefits, or mental, emotional and/or physical well-being; or (2) reasonably causes or would reasonably be expected to cause a student to fear for his or her physical safety. Such conduct shall include, but is not limited to, threats, intimidation or abuse based on a person's actual or perceived race, color, weight, national origin, ethnic group, religion, religious practices, disability, sexual orientation, gender, or sex;
- provisions for responding to such acts of discrimination or harassment against students by employees or students on school property or at a school function;
- a bill of rights and responsibilities of students which focuses upon positive student behavior and a safe and supportive school climate, which shall be written in plain-language, publicized and explained in an age-appropriate manner to all students on an annual basis; and
- guidelines and programs for in-service education programs for all district staff members to ensure effective implementation of school policy on school conduct and discipline, including but not limited to, guidelines on promoting a safe and supportive school climate while discouraging, among other things, discrimination or harassment against students by students and/or school employees, and including safe and supportive school climate concepts in the curriculum and classroom

The proposed rule also requires that charter schools include in their disciplinary rules and procedures pursuant to Education Law section 2851(2)(h) or, if applicable, in its code of conduct, provisions prohibiting discrimination and harassment against any student, by employees or students on school property or at a school function; provisions for responding to acts of discrimination and harassment against students by employees or students on school property or at a school function; and (c) guidelines on promoting

a safe and supportive school climate while discouraging, among other things, discrimination or harassment against students by students and/or school employees; and including safe and supportive school climate concepts in the curriculum and classroom management.

Recommendation

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

VOTED: that paragraph (2) of subdivision (l) of section 100.2 of the Regulations of the Commissioner of Education be amended and that section 119.6 be added, as submitted, effective July 1, 2012.

Timetable for Implementation

The statute provides that any rules or regulations necessary for the timely implementation of the Dignity Act shall be promulgated on or before July 1, 2012. If adopted at the March Regents meeting, the proposed rule would take effect on July 1, 2012.

AMENDMENT OF THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to Education Law sections 11, 12, 13, 14, 207, 305, 2801 and 2854(1)(b), and Chapter 482 of the Laws of 2010.

1. Paragraph (2) of subdivision (l) of section 100.2 of the Regulations of the Commissioner of Education is amended, effective July 1, 2012, as follows:

(2) Code of Conduct

(i) On or before July 1, 2001, each board of education and board of cooperative educational services shall adopt and provide for the enforcement of a written code of conduct for the maintenance of order on school property and at school functions, as defined in Education Law, [section] sections 11(1) and (2) and 2801(1), which shall govern the conduct of students, teachers, other school personnel, and visitors. Such a code shall be developed in collaboration with student, teacher, administrator, and parent organizations, school safety personnel and other school personnel and shall be approved by the board of education, or other governing body, or by the chancellor of the city school district in the case of the City School District of the City of New York. The City School District of the City of New York shall adopt a district-wide code of conduct and each community school district may, upon approval of the chancellor, adopt and implement additional policies, which are consistent with the city school district's district-wide code of conduct, to reflect the individual needs of each community school district. A school district or board of cooperative educational services shall adopt its code of conduct only after at least one public hearing that provides for the participation of school personnel, parents, students, and any other interested parties.

(ii) The code of conduct shall include, but is not limited to:

(a) provisions regarding conduct, dress and language deemed appropriate and acceptable on school property and at school functions, and conduct, dress, and language deemed unacceptable and inappropriate on school property and provisions regarding acceptable civil and respectful treatment of teachers, school administrators, other school personnel, students, and visitors on school property and at school functions, including the appropriate range of disciplinary measures which may be imposed for violation of such code, and the roles of teachers, administrators, other school personnel, the board of education and parents;

(b) provisions prohibiting discrimination and harassment against any student, by employees or students on school property or at a school function, that creates a hostile environment by conduct, with or without physical contact and/or by verbal threats, intimidation or abuse, of such a severe nature that:

(1) has or would have the effect of unreasonably and substantially interfering with a student's educational performance, opportunities or benefits, or mental, emotional and/or physical well-being; or

(2) reasonably causes or would reasonably be expected to cause a student to fear for his or her physical safety.

Such conduct shall include, but is not limited to, threats, intimidation, or abuse based on a person's actual or perceived race, color, weight, national origin, ethnic group, religion, religious practices, disability, sexual orientation, gender as defined in Education Law §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;

[(b)] (c) standards and procedures to assure security and safety of students and school personnel;

[(c)] (d) provisions for the removal from the classroom [and from], school property and school functions of students and other persons who violate the code;

[(d)] (e) provisions prescribing the period for which a disruptive pupil may be removed from the classroom for each incident, provided that no such pupil shall return to the classroom until the principal makes a final determination pursuant to Education Law section 3214(3-a)(c), or the period of removal expires, whichever is less;

[(e)] (f) disciplinary measures to be taken in incidents on school property or at school functions involving the possession or use of illegal substances or weapons, the use of physical force, vandalism, violation of another student's civil rights, harassment and threats of violence;

(g) provisions for responding to acts of discrimination and harassment against students by employees or students on school property or at a school function pursuant to clause (b) of this subparagraph;

[(f)] (h) provisions for detention, suspension and removal from the classroom of students, consistent with Education Law section 3214 and other applicable Federal, State, and local laws including provisions for the school authorities to establish policies and procedures to ensure the provision of continued educational programming and activities for students removed from the classroom, placed in detention, or suspended from school, which shall include alternative educational programs appropriate to individual student needs;

[(g)] (i) procedures by which violations are reported, determined, discipline measures imposed and discipline measures carried out;

[(h)] (j) provisions ensuring such code and the enforcement thereof are in compliance with State and Federal laws relating to students with disabilities;

[(i)] (k) provisions setting forth the procedures by which local law enforcement agencies shall be notified of code violations which constitute a crime;

[(j)] (l) provisions setting forth the circumstances under and procedures by which persons in parental relation to the student shall be notified of code violations;

[(k)] (m) provisions setting forth the circumstances under and procedures by which a complaint in criminal court, a juvenile delinquency petition or person in need of supervision petition as defined in [articles] Articles three and seven of the Family Court Act will be filed;

[(l)] (n) circumstances under and procedures by which referral to appropriate human service agencies shall be made;

[(m)] (o) a minimum suspension period, for any student who repeatedly is substantially disruptive of the educational process or substantially interferes with the teacher's authority over the classroom, provided that the suspending authority may reduce such period on a case-by-case basis to be consistent with any other State and Federal Law. For purposes of this requirement, "repeatedly is substantially disruptive of the educational process or substantially interferes with the teacher's authority over the classroom" shall mean engaging in conduct which results in the removal of the student from the classroom by teacher(s) pursuant to the provisions of Education Law section 3214(3-a) and the provisions set forth in the code of conduct on four or more occasions during a semester, or three or more occasions during a trimester, as applicable;

[(n)] (p) a minimum suspension period for acts that would qualify the pupil to be defined as a violent pupil pursuant to Education Law section 3214(2-a)(a), provided that the suspending authority may reduce such period on a case- by-case basis to be consistent with any other State and Federal law;

[(o)] (q) a bill of rights and responsibilities of students which focuses upon positive student behavior and a safe and supportive school climate, [and] which shall be written in plain-language, publicized and explained in an age-appropriate manner to all students on an annual basis; and

[(p)] (r) guidelines and programs for in-service education programs for all district staff members to ensure effective implementation of school policy on school conduct and discipline, including but not limited to, guidelines on promoting a safe and supportive school climate while discouraging, among other things, discrimination or harassment against students by students and/or school employees; and including safe and supportive school climate concepts in the curriculum and classroom management.

(iii) Additional responsibilities.

(a) Each board of education and, in the case of the City School District of the City of New York, the chancellor of such city school district, and each board of cooperative educational services shall annually review and update as necessary its code of conduct, taking into consideration the effectiveness of code provisions and the fairness and consistency of its administration. A school district may establish a committee pursuant to Education Law section 2801(5) (a) to facilitate the review of its code of conduct and the district's response to code of conduct violations. A board of education or board of cooperative educational services may adopt any revision to the code of conduct only after at least one public hearing that provides for the participation

of school personnel, parents, students, and any other interested party. Each district shall file a copy of its code of conduct and any amendments with the commissioner, in a manner prescribed by the commissioner, no later than 30 days after their respective adoptions.

(b) Each board of education and board of cooperative educational services shall ensure community awareness of its code of conduct by:

(1) posting the complete code of conduct, respectively, on the Internet web site, if any, of the school or school district, or of the board of cooperative educational services, including any annual updates to the code made pursuant to clause (a) of this subparagraph and any other amendments to the code;

~~[(1)]~~ (2) providing copies of a summary of the code of conduct to all students, in an age-appropriate version, written in plain-language, at a ~~[general] school~~ assembly to be held at the beginning of each school year;

~~[(2)]~~ (3) ~~[mailing]~~ providing a plain language summary of the code of conduct to all persons in parental relation to students before the beginning of ~~[the] each~~ school year and making such summary available thereafter upon request;

~~[(3)]~~ (4) providing each existing teacher with a copy of the complete code of conduct and a copy of any amendments to the code as soon as practicable following initial adoption or amendment of the code, and providing new teachers with a complete copy of the current code upon their employment; and

~~[(4)]~~ (5) making complete copies available for review by students, parents or ~~[other]~~ persons in parental relation to students, ~~[nonteaching]~~ other school staff and other community members.

2. Section 119.6 of the Regulations of the Commissioner of Education is added, effective July 1, 2012, as follows:

119.6 Policies against discrimination and harassment. Each charter school shall include in its disciplinary rules and procedures pursuant to Education Law section 2851(2)(h) or, if applicable, in its code of conduct:

(a) provisions, in an age-appropriate version and written in plain-language, prohibiting discrimination and harassment against any student, by employees or students on school property or at a school function, that creates a hostile environment by conduct, with or without physical contact and/or by verbal threats, intimidation or abuse, of such a severe nature that:

(1) has or would have the effect of unreasonably and substantially interfering with a student's educational performance, opportunities or benefits, or mental, emotional and/or physical well-being; or

(2) reasonably causes or would reasonably be expected to cause a student to fear for his or her physical safety.

Such conduct shall include, but is not limited to, threats, intimidation, or abuse based on a person's actual or perceived race, color, weight, national origin, ethnic group, religion, religious practices, disability, sexual orientation, gender as defined in Education Law §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;

(b) provisions for responding to acts of discrimination and harassment against students by employees or students on school property or at a school function as defined in Education Law sections 11(1) and (2), pursuant to subdivision (a) of this section, including but not limited to disciplinary measures to be taken; and

(c) guidelines on promoting a safe and supportive school climate while discouraging, among other things, discrimination or harassment against students by students and/or school employees; and including safe and supportive school climate concepts in the curriculum and classroom management.

PROPOSED AMENDMENT OF SECTION 100.2(l) AND ADDITION OF SECTION 119.6 OF THE REGULATIONS OF THE COMMISSIONER OF EDUCATION PURSUANT TO EDUCATION LAW SECTIONS 11, 12, 13, 14, 101, 207, 305, 2801 and 2854(1)(b), AND CHAPTER 482 OF THE LAWS OF 2010, RELATING TO SCHOOL DISTRICT AND BOCES CODES OF CONDUCT AND THE DIGNITY FOR ALL STUDENTS ACT

ASSESSMENT OF PUBLIC COMMENT

Since publication of a Notice of Proposed Rule Making in the State Register on January 18, 2012, the State Education Department received the following comments.

1. COMMENT:

We commend the State Education Department for its thoughtful approach to implementing DASA. Successful implementation is critical to the safety and well-being of New York students. We fully support the proposed rule as a component of such implementation.

DEPARTMENT RESPONSE:

No response is necessary, as the comment is supportive.

2. COMMENT:

The proposed rule's provision that the complete code of conduct, including annual updates and other amendments to the code, be posted on the Internet web site of each school district will impose a hardship on small school districts that do not maintain an Internet web site. It was suggested that, in lieu of such requirement, a school district be allowed to mail copies of the code to all families in the district.

DEPARTMENT RESPONSE:

The proposed provision [section 100.2(l)(2)(iii)(b)(1)] is intended to require only those schools, school districts and boards of cooperative educational services that maintain websites to post their codes of conduct, and any updates and amendments to them, on such websites. The proposed amendment has been revised to clarify this. The Department may consider issuing guidance with respect to those schools and school districts that do not maintain websites.