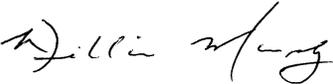




TO: The Honorable the Members of the Board of Regents

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 Permitting the Dignity for All Students Act (DASA) Training to Be Provided Entirely Online Due to the COVID-19 Crisis

DATE: July 1, 2021

AUTHORIZATION(S):  

SUMMARY

Issue for Decision (Consent)

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 permitting the Dignity for All Students Act (DASA) training to be provided entirely online due to the COVID-19 crisis?

Reason(s) for Consideration

Review of policy.

Proposed Handling

The proposed amendment will be presented to the Full Board for adoption as an emergency rule at its July 2021 meeting. A copy of the proposed amendment is attached (Attachment A), as well as a statement of facts and circumstances justifying emergency action (Attachment B).

Procedural History

The proposed amendment was presented to the Higher Education Committee for recommendation to the Full Board for adoption as an emergency rule at the June 2021 meeting of the Board of Regents. A Notice of Emergency Adoption and Proposed Rule Making was published in the State Register on June 23, 2021 for a 60-day public comment period. Because the June emergency action will expire on September 5,

2021, a second emergency action is necessary to ensure the emergency rule remains continuously in effect until it can be permanently adopted at the September 2021 Regents meeting. 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 voted to permit the six-clock-hour DASA training to be conducted entirely online, and to no longer include at least three clock hours through face-to-face instruction, during the time of the State of emergency declared by the Governor pursuant to an Executive Order for the COVID-19 crisis.

As currently written, the regulation allows such training to be conducted entirely online during the State of emergency. However, as COVID-19 numbers in New York State continue to decline, it remained unclear at the time of the June 2021 Board of Regents meeting, exactly how long the executive order declaring the State of emergency would remain in effect. As of June 25, 2021, the State of emergency is no longer in effect.

Therefore, to provide some certainty in this regard, the Department proposed to permit approved DASA training providers, including institutions of higher education that include the DASA training in their educator preparation program curricula, to provide DASA training entirely online through December 31, 2021 in response to the State of emergency declared by the Governor pursuant to Executive Order for the COVID-19 crisis. Candidates would be permitted to complete the DASA training entirely online during this time period. Although the State of emergency has been lifted, the Department continues to propose this course of action to promote stability and certainty in the field.

This amendment ensures that DASA training can be completed entirely online until December 31, 2021, even though the executive order declaring the State of emergency has now expired. Additionally, the set date in the proposed amendment will help approved DASA training providers, including institutions of higher education, plan for this flexibility in DASA training through December 31, 2021.

Related Regents Items

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>)

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>)

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, effective September 6, 2021, as an emergency action upon a finding by the Board of Regents that such action is necessary for the preservation of the general welfare and public health to permit DASA training to be provided entirely online through December 31, 2021, whether or not a State of emergency for the COVID-19 crisis exists, and to ensure that the emergency action taken at the June 2021 meeting remains continuously in effect.

Timetable for Implementation

If adopted as an emergency rule at the July 2021 Regents meeting, the emergency rule will become effective September 6, 2021. It is anticipated that the proposed rule will be presented to the Board of Regents for permanent adoption at the September 2021 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 September 2021 meeting, the proposed amendment will become effective on September 29, 2021.

Attachment A

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 [during the time period of] 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 [during the time period of] 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 [during the time period of] 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 [during the time period of] 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 [during the time period of] 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 [during the time period of] 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 [during the time period of] 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, 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 [during the time period of] 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 voted to permit the six-clock-hour DASA training to be conducted entirely online, and to 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.

As currently written, the regulation allows such training to be conducted entirely online during the State of emergency. However, as COVID-19 numbers in New York State continue to decline, it remained unclear at the time of the June 2021 Board of Regents meeting exactly how long the executive order declaring the State of emergency

would remain in effect. As of June 25, 2021, the State of Emergency is no longer in effect.

Therefore, to provide some certainty in this regard, the Department proposed to permit approved DASA training providers, including institutions of higher education that include the DASA training in their educator preparation program curricula, to provide DASA training entirely online through December 31, 2021 in response to the State of emergency declared by the Governor pursuant to Executive Order for the COVID-19 crisis. Candidates would be permitted to complete the DASA training entirely online during this time period. Although the State of Emergency has been lifted, the Department continues to propose this course of action to promote stability and certainty in the field.

This amendment ensures that DASA training can be completed entirely online until December 31, 2021, even though the executive order declaring the State of emergency expires prior to such date. Additionally, the set date in the proposed amendment will help approved DASA training providers, including institutions of higher education, plan for this flexibility in DASA training through December 31, 2021.

The proposed amendment was presented to the Higher Education Committee for recommendation to the Full Board for adoption as an emergency rule at the June 2021 meeting of the Board of Regents, effective June 8, 2021. 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 September 2021 Regents meeting. Furthermore, pursuant to SAPA 203(1), the earliest effective date of the proposed rule, if adopted at the September meeting, would be September 29, 2021, the date the Notice of Adoption would be published in the State Register.

However, the emergency rule will expire on September 5, 2021. Therefore, a second emergency action is necessary at the July 2021 meeting for preservation of the general welfare and public health in order to permit DASA training to be provided entirely online through December 31, 2021, whether or not a State of emergency for the COVID-19 crisis exists, and to ensure that the emergency action taken at the June 2021 meeting remains continuously in effect until the rule can be permanently adopted.

It is anticipated that the proposed rule will be presented to the Board of Regents for adoption as a permanent rule at its September 2021 meeting, which is the first scheduled meeting after expiration of the 60-day public comment period mandated by SAPA for State agency rule making.