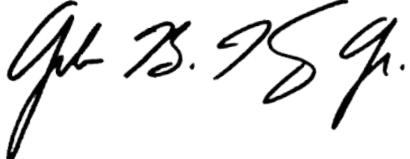




THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK / ALBANY, NY 12234

TO: The Honorable the Members of the Board of Regents
FROM: Ken Slentz 
SUBJECT: Addition of section 100.2(jj) of the Commissioner's
Regulations, Relating to School Employee Training to
implement the Dignity for All Students Act
DATE: July 9, 2012

AUTHORIZATION(S):



SUMMARY

Issue for Decision (Consent Agenda)

Should the Board of Regents adopt the proposed addition of a new section 100.2(jj), relating to school employee training 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 rule is being presented to the Full Board for adoption as an emergency rule at the July Regents meeting. A statement of the facts and circumstances which necessitate emergency action is attached.

Procedural History

The proposed rule was discussed by the P-12 Education Committee at the February Regents meeting. A Notice of Proposed Rule Making was published in the State Register on February 15, 2012. The proposed rule was revised in response to public comment and discussed at the April Regents meeting. A Notice of Revised Rule Making was published in the State Register on April 25, 2012. The proposed rule was revised a second time and adopted as an emergency action at the May Regents meeting. A Notice of Emergency Adoption and Revised Rule Making was published in the June 6, 2012 State Register. The proposed rule has been further revised in

response to public comment. A Notice of Emergency Adoption and Revised Rule Making will be published in the August 1, 2012 State Register. A copy of the revised proposed rule and an Assessment of Public Comment is attached. Supporting materials are available upon request from the Secretary to the Board of Regents.

Background Information

Chapter 482 of the Laws of 2010 added a new Article 2 to the Education Law (Ed.L. §§10 through 18), relating to the Dignity for All Students Act. The statute's provisions took effect on July 1, 2012.

The proposed rule establishes standards for a program to train school employees and administrators to promote a positive school environment that is free from discrimination and harassment; and to discourage and respond to incidents of discrimination and/or harassment on school property or at a school function. Specifically, the proposed rule requires each school district, BOCES and charter school to create guidelines to provide:

- On or before July 1, 2012, for schools to implement school employee training programs, commencing with the 2012-13 school year and thereafter, to promote a positive school environment that is free from discrimination and harassment and to discourage and respond to incidents of discrimination and/or harassment on school property or at a school function. Employee training guidelines shall be approved by the board of education of the school district (or by the chancellor of the city school district in the case of the City School District of the City of New York) and by the board of trustees of the charter school;
- Training for employees, including school and district administrators:
 - (i) to raise awareness and understanding of the school district's Code of Conduct pursuant to section 100.2(l) of this Title or, in the case of a charter school, the school's disciplinary rules and procedures pursuant to Education Law section 2851(2)(h) or, if applicable, the charter school's code of conduct;
 - (ii) to raise awareness and sensitivity to potential acts of discrimination or harassment directed at students that are committed by students and/or school employees on school property or at school functions; including, but not limited 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 identity or sex; and
 - (iii) to enable employees to prevent and respond to incidents of harassment and discrimination.

Training and/or refresher training are to be conducted as needed, and may be implemented and conducted in conjunction with existing professional development training pursuant to 100.2(dd)(2)(ii) of this Title and/or with any other training for school employees.

- Development of nondiscriminatory instructional and counseling methods.
- At least one employee in every school shall be designated as a Dignity Act Coordinator and instructed in the provisions of the proposed rule and thoroughly trained in methods to respond to human relations in the areas of race, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender and sex.
 - (i) The designation of each Dignity Act Coordinator shall be approved by the board of education, trustees or sole trustee of the school district (or in the case of the City School District of the City of New York, by the principal of the school in which the designated employee is employed) and, in the case of a charter school, by the board of trustees.
 - (ii) The name(s) and contact information for the Dignity Act Coordinator(s) shall be shared with all school personnel, students, and persons in parental relation.
 - (iii) In the event a Dignity Act Coordinator (Coordinator) vacates his or her position, another school employee shall be immediately designated for an interim appointment as Coordinator, pending approval of a successor Coordinator by the applicable governing body within 30 days of the date the position was vacated. In the event a Coordinator is unable to perform the duties of his or her position for an extended period of time, another school employee shall be immediately designated for an interim appointment as Coordinator, pending return of the previous Coordinator to his or her duties as Coordinator.

Since publication of a Notice of Emergency Adoption and Revised Rule Making in the June 6, 2012 State Register, the following changes were made to the proposed rule:

- Section 100.2(jj)(4)(ii)(c) was revised to permit school districts, BOCES and charter schools, in lieu of a mailing, to provide parents and persons in parental relation with the name and contact information of designated Dignity Act Coordinators by other methods of distribution, such as sending the information home with students.
- A technical revision was made to section 100.2(jj)(1)(iv) to clarify the applicability of the definition of "employee" with respect to employees of charter schools, and to otherwise ensure consistency with the definition of

"employee" in a separate proposed amendment to section 100.2(kk)(1)(iv), relating to Dignity Act reporting requirements.

Recommendation

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

VOTED: that the addition of subdivision (jj) of section 100.2 of the Regulations of the Commissioner of Education, which was adopted by the Board of Regents as an emergency action on May 22, 2012 and for which a Notice of Emergency Adoption and Revised Rule Making was published in the State Register on June 6, 2012 (EDU-07-12-00011-ERP), is repealed, effective July 17, 2012, and it is further

VOTED: that subdivision (jj) of section 100.2 of the Regulations of the Commissioner of Education be added, as submitted, effective July 17, 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 immediately adopt revisions to the proposed rule made in response to public comment so that the revised provisions may be timely implemented during the 2012-2013 school year, and to otherwise ensure that the emergency rule adopted at the May Regents meeting, as revised and readopted at the July Regents meeting, remains continuously in effect until the effective date of its permanent adoption at a subsequent Regents meeting.

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. The proposed amendment was adopted as an emergency action at the May Regents meeting, effective May 22, 2012. If adopted at the July Regents meeting, the May emergency rule will be repealed, and the revised emergency rule will take effect, on July 17, 2012. It is anticipated that the proposed amendment will be presented for permanent adoption at the September Regents meeting, after expiration of the 30-day public comment period prescribed for revised rule makings by the State Administrative Procedure Act.

AMENDMENT OF THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to Education Law sections 11, 12, 13, 14, 101, 207, 305 and 2854(1)(b) and Chapter 482 of the Laws of 2010.

1. The addition of subdivision (jj) of section 100.2 of the Regulations of the Commissioner of Education, which was adopted by the Board of Regents as an emergency action on May 22, 2012 and for which a Notice of Emergency Adoption and Revised Rule Making was published in the State Register on June 6, 2012 (EDU-07-12-00011-ERP), is repealed, effective July 17, 2012.

2. Subdivision (jj) of section 100.2 of the Regulations of the Commissioner of Education is added, effective July 17, 2012, as follows:

(jj) Dignity For All Students School Employee Training Program.

(1) Definitions. As used in this subdivision:

(i) "School property" means in or within any building, structure, athletic playing field, playground, parking lot or land contained within the real property boundary line of a public elementary or secondary school, including a charter school; or in or on a school bus, as defined in Vehicle and Traffic Law section 142.

(ii) "School function" means a school-sponsored extracurricular event or activity.

(iii) "Disability" means disability as defined in Executive Law section 292(21).

(iv) "Employee" means employee as defined in Education Law section 1125(3), including an employee of a charter school.

(v) "Sexual orientation" means actual or perceived heterosexuality, homosexuality or bisexuality.

(vi) "Gender" means actual or perceived sex and shall include a person's gender identity or expression.

(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, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender or sex.

(viii) "Harassment" means the creation of a hostile environment by conduct or by verbal threats, intimidation or abuse that has or would have the effect of unreasonably and substantially interfering with a student's educational performance, opportunities or benefits, or mental, emotional or physical well-being; or conduct, verbal threats, intimidation or abuse that reasonably causes or would reasonably be expected to cause a student to fear for his or her physical safety; such conduct, verbal threats, intimidation or abuse includes but is not limited to conduct, verbal threats, intimidation or abuse based on a person's actual or perceived race, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender or sex.

(2) On or before July 1, 2012, each school district and each charter school shall establish guidelines for its school or schools to implement, commencing with the 2012-2013 school year and continuing in each school year thereafter, Dignity for All Students school employee training programs to promote a positive school environment that is free from discrimination and harassment; and to discourage and respond to incidents of discrimination and/or harassment on school property or at a school function. Such guidelines shall be approved by the board of education, trustees or sole trustee of the school district (or by the chancellor of the city school district, in the case of the City School District of the City of New York) or by the board of trustees of the charter school.

(3) The guidelines shall include, but not be limited to, providing employees,

including school and district administrators and instructional and non-instructional staff,
with:

(i) training to:

(a) raise awareness and sensitivity to potential acts of discrimination and/or harassment directed at students that are committed by students and/or school employees on school property or at a school function; including, but not limited to, discrimination and/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; and

(b) training to enable employees to prevent and respond to incidents of discrimination and/or harassment;

(c) such training may be implemented and conducted in conjunction with existing professional development training pursuant to subparagraph 100.2(dd)(2)(ii) of this Title and/or with any other training for school employees; and

(ii) guidelines relating to the development of nondiscriminatory instructional and counseling methods.

(4) At least one employee in every school shall be designated as a Dignity Act Coordinator and instructed in the provisions of this subdivision and thoroughly trained to handle human relations in the areas of race, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender, and sex.

(i) The designation of each Dignity Act Coordinator shall be approved by the board of education, trustees or sole trustee of the school district (or in the case of the City School District of the City of New York, by the principal of the school in which the

designated employee is employed) or, in the case of a charter school, by the board of trustees.

(ii) The name(s) and contact information for the Dignity Act Coordinator(s) shall be shared with all school personnel, students, and persons in parental relation, which shall include, but is not limited to, providing the name, designated school and contact information of each Dignity Act Coordinator by:

(a) listing such information in the code of conduct and updates posted on the Internet web site, if available, of the school or school district, or of the board of cooperative educational services, pursuant to subclause 100.2(l)(2)(iii)(b)(1) of this Part;

(b) including such information in the plain language summary of the code of conduct provided to all persons in parental relation to students before the beginning of each school year, pursuant to subclause 100.2(l)(2)(iii)(b)(3);

(c) providing such information to parents and persons in parental relation in at least one per school year district or school mailing or other method of distribution including, but not limited to, sending such information home with each student and, if such information changes, in at least one subsequent district or school mailing or other such method of distribution as soon as practicable thereafter;

(d) posting such information in highly-visible areas of school buildings; and

(e) making such information available at the district and school-level administrative offices.

(iii) In the event a Dignity Act Coordinator vacates his or her position, another school employee shall be immediately designated for an interim appointment as Coordinator, pending approval of a successor Coordinator by the applicable governing body as set forth in subparagraph (i) of this paragraph within 30 days of the date the

position was vacated. In the event a Coordinator is unable to perform the duties of his or her position for an extended period of time, another school employee shall be immediately designated for an interim appointment as Coordinator, pending return of the previous Coordinator to his or her duties as Coordinator.

(5) 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.

PROPOSED ADDITION OF SECTION 100.2(jj) OF THE REGULATIONS OF THE
COMMISSIONER OF EDUCATION PURSUANT TO EDUCATION LAW SECTIONS 11,
12, 13, 14, 101, 207, 305 and 2854(1)(b), AND CHAPTER 482 OF THE LAWS OF
2010, RELATING TO THE DIGNITY FOR ALL STUDENTS ACT EMPLOYEE
TRAINING PROGRAM

ASSESSMENT OF PUBLIC COMMENT

Since publication of a Notice of Revised Rule Making in the State Register on April 25, 2012 and a Notice of Emergency Adoption and Revised Rule Making in the State Register on June 6, 2012, the State Education Department received the following comments:

1. COMMENT:

To require all schools to include the name(s), designated school and contact information for each Dignity Act Coordinator (DAC) in the printed code of conduct and in at least one mandated mailing per year to all persons in parental relation, with additional mailings as needed if such information changes, would pose an undue and significant financial burden on school districts and its schools, and therefore this requirement should be deleted from the proposed rule. Persons in parental relation would be better served by other more time sensitive methods of communicating the name of the DAC such as electronic media or via regularly scheduled parent meetings, and publication in already existing school publications that are promulgated on a regular basis.

DEPARTMENT RESPONSE:

A key aspect in the proposed rule is the importance that students, parents, persons in parental relation, and staff be aware of who the Dignity Act Coordinator is in their respective school. Including this information in the Code of Conduct, which must

be posted on the Internet and provided as a plain language summary pursuant to 100.2(l)(2)(iii)(b)(3), further emphasizes the critical link between the Dignity Act and the Code of Conduct. The requirement in the proposed rule that the name and contact information for the Dignity Act Coordinator be included in at least one district or school mailing per school year to parents and persons of parental relation and, if such information changes, in at least one subsequent district or school mailing as soon as practicable thereafter reinforces the importance that communication between persons in parental relation, teachers, and the Dignity Act Coordinator and other educational professionals within the school is essential to the overall support and success of students. The Department agrees that mailing materials is costly and further agrees that schools routinely provide materials to persons in parental relation by “backpacking” materials home with students. The proposed rule has been amended to provide an option that materials be mailed or sent home with students.

2. COMMENT:

Having only one employee in every school designated as a DAC is unrealistic and short-sighted.

DEPARTMENT RESPONSE:

The requirement in proposed section 100.2(j)(4) that at least one employee in every school be designated as a Dignity Act Coordinator is consistent with the Dignity Act statute which requires that “. . . at least one staff member at every school be thoroughly trained to handle human relations in the areas of race, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender, and sex (Education Law §13[3]). The proposed rule does not preclude designation of more than one DAC. Because the proposed rule is applicable across the State, from

large city school districts to small rural districts, the Department believes that determination of the appropriate number of DAC to be designated, beyond the required one per school, is best left as a local decision to be made by each school district, BOCES and charter school to best address their individual needs and circumstances.

3. COMMENT:

The proposed rule should be implemented in stages, with stage 1 being staff training about bullying/harassment recognition and intervention, rather than rushing to implement the Dignity Act requirements by July 1. Model and non-model programs should be reviewed and a reporting document should be in place to document incidents.

DEPARTMENT RESPONSE:

The July 1, 2012 effective date is in the text of the statute and cannot be amended through the rule-making process. Model programs were reviewed in researching and developing guidance materials posted on the Department's Dignity Act web site. Individual incident reporting formats are developed at the local level. The Department has proposed a rule (100.2[kk]) to comply with Education Law §15's requirement that all material incidents of discrimination and/or harassment on school grounds or at a school function must be annually reported to the Department. Proposed rule 100.2(kk) is the subject of a separate revised rule making published in the State Register on July 18, 2012 (EDU-15-12-00011-ERP). .

4. COMMENT:

It was reiterated that the proposed rule should be revised to clarify the role and responsibilities of the Dignity Act Coordinator (DAC), so that schools may choose an appropriate candidate and help candidates understand the time commitment associated with the role. The DAC should be responsible for coordination of employee training,

implementation of district policy, ensuring inclusive curriculum, and final responsibility for investigations and student discipline. The DAC must have administrative credentials to manage student discipline such as a vice principal or other senior administrator, have interaction with students, authority to implement policy changes based on the Dignity Act, and the ability to further implement without compromising other professional responsibilities.

DEPARTMENT RESPONSE:

The Department continues to believe that since the role of the DAC will vary from school-to-school and from district-to-district, depending on the varying needs and circumstances particular to each school and district across the State, from large city school districts to small rural districts, the determination of the specific role and duties of the DAC is best left as a local decision to be made by each school district, BOCES and charter school to best address their individual needs and circumstances. In addition, the Department may consider issuing guidance regarding recommended best practices with respect to the DAC's duties.

5. COMMENT:

It was reiterated that the proposed rule be revised to provide that the Department either offer training for DACs or authorize designated service providers to perform this training and to clarify how this training will take place, and to include a requirement that the DAC do "turnkey" training with all school staff to share what they have learned.

DEPARTMENT RESPONSE:

The Department again acknowledges that a turnkey approach might lessen the burden imposed on schools by the statute's unfunded mandate, but nevertheless continues to believe that providing turnkey training to trainers in large cities, BOCES,

and/or Joint Management Team areas would impose substantial costs. Therefore, the Department is considering developing a "static," non-interactive webinar to provide basic DAC training to the field. This is the most economical route and will ensure a consistent message is shared across schools.

6. COMMENT:

It was reiterated that the proposed rule should be revised to encourage regular evaluations of training programs for school districts to assess their effectiveness, and include evaluations of select school districts and charter schools by the Department on at least an annual basis. The Department is also encouraged to evaluate non-district based professional development services which offer training for either Dignity Act Coordinators or general employee training under the Dignity Act.

DEPARTMENT RESPONSE:

Although the Department agrees that evaluations can be beneficial, there is no requirement in the Dignity Act to provide them and they would be a fiscal burden to impose on school districts and the Department at this time, given that no funding for such evaluations by either school districts or the Department has been provided in the Dignity Act or any other legislation.

7. COMMENT:

Schools should be permitted to designate a position (as opposed to a specific, named individual) that will serve as the DAC for each school, and the board of trustees should only be required to approve that position designation (not a specific individual). As an example of the proposed rule's impracticality, a promotion or personnel change affecting this role would require the school to re-designate, obtain board approval within 30 days (which is not always possible, depending on timing of board meetings), and re-

issue all documentation to parents with the updated name—a time-consuming and expensive proposition that could be alleviated by simply designating a position rather than an individual name.

DEPARTMENT RESPONSE:

Boards of Education and Boards of Trustees are legally responsible for ensuring that the Dignity Act statute and rules are implemented to ensure safe and supportive environments. Since the Dignity Act applies to student-to-student behaviors, employee-to-student behaviors and student and employee to student behaviors, approving the specific individuals designated as the Dignity Act Coordinator in each school is a critical element to ensuring that the Dignity Act's integration into the overall school environment will be timely and objective. The Department believes that this provision is necessary to ensure that one or more specifically designated individuals act as DAC at all times, and that the board of education, BOCES or governing body of the charter school are directly involved in the delegation of individual(s) as DAC, in order to elevate the standing of the position and to make it clear that this is an important and necessary position.

8. COMMENT:

Schools should not be required to list specific, individual names or contact information in a code of conduct, any summary of a code of conduct, or any equivalent document. Schools should not be required to post this information throughout the school building. Mailing is not an effective manner of disseminating this type of information, as the mailed notice is a one-time notice that will likely be quickly discarded and forgotten. Instead, schools should be permitted to disseminate the information in a widely distributed bullying policy, with the name and contact information of the position

(rather than a specific, named individual) explicitly and clearly listed. Provision of information on websites should be optional, or required only to the extent that detailed personnel and HR matters are included on the website.

Furthermore, schools should not be required to disseminate DAC information prior to the start of the school year; instead, the information should be disseminated at or around the start of the school year.

DEPARTMENT RESPONSE:

The Department believes that communication between students, parents, persons in parental relation, teachers, administrators, other educational professionals/school employees, and the Dignity Act Coordinator (DAC) is essential. Posting the name and contact information of the DAC by various means as set forth in section 100.2(jj)(4)(ii) will promote the importance of the Dignity Act on a daily basis, remind students and the rest of the school community who the DAC is, and encourage communication and interaction related to the Dignity Act between all school building occupants and the school community. It will also ensure greater school community awareness of this vital information than mere inclusion of DAC name(s) and contact information in a bullying policy, which would only serve to reference the existence of the DAC rather than proactively promoting the DAC's availability in the school. Requiring a wide and varying means of disseminating this contact information elevates the importance of the DAC and the requirements of the Dignity Act. Finally, since the official start of the school year is July 1st and the official end of the school year is June 30th, requiring Dignity Act Coordinators to be designated in each school by September is not unreasonable.

PROPOSED ADDITION OF SECTION 100.2(jj) OF THE REGULATIONS OF THE
COMMISSIONER OF EDUCATION PURSUANT TO EDUCATION LAW SECTIONS 11,
12, 13, 14, 101, 207, 305 and 2854(1)(b), AND CHAPTER 482 OF THE LAWS OF
2010, RELATING TO THE DIGNITY FOR ALL STUDENTS ACT EMPLOYEE
TRAINING PROGRAM

STATEMENT OF FACTS AND CIRCUMSTANCES WHICH NECESSITATE
EMERGENCY ACTION

The proposed rule is necessary to implement provisions of the Dignity Act. The statute added a new Article 2 to the Education Law and new section 13 of Article 2 to require school districts, boards of cooperative educational services (BOCES) and charter schools to create:

- (i) policies to create a school environment free from discrimination and harassment;
- (ii) guidelines to be used in school training programs to discourage the development of discrimination or harassment and that are designed to raise awareness and sensitivity of school employees to potential discrimination or harassment and enable employees to prevent and respond to discrimination or harassment; and
- (iii) guidelines relating to the development of nondiscriminatory instructional and counseling methods, and requiring that at least one staff member of every school be thoroughly trained to handle human relations in the areas of race, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender and sex.

The proposed rule establishes standards and criteria for the issuance of such policies and guidelines.

The proposed rule was discussed by the P-12 Education Committee at the February Regents meeting. A Notice of Proposed Rule Making was published in the State Register on February 15, 2012. The proposed rule was subsequently revised in response to public comment and discussed at the April Regents meeting. A Notice of Revised Rule Making was published in the State Register on April 25, 2012. The proposed rule was subsequently revised and adopted as an emergency rule at the May Regents meeting, effective May 22, 2012. A Notice of Emergency Adoption and Revised Rule Making was published in the State Register on June 6, 2012.

Additional revisions have now been made to the proposed revised rule in response to public comment. Because the Board of Regents meets at fixed intervals, the earliest the proposed revised rule could be presented for regular adoption, after publication in the State Register and expiration of the 30-day public comment period provided for revised rule makings pursuant to the State Administrative Procedure Act (SAPA) section 202(4-a), 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 September 26, 2012, the date a Notice of Adoption would be published in the State Register. However, the Dignity Act took effect on July 1, 2012, and the May emergency rule, which implements the provisions of Education Law §13, will expire on August 19, 2012. A lapse in the effective date of the rule may disrupt the provision of training, policies and guidelines under the Dignity Act to prevent harassment and discrimination.

Emergency action is therefore necessary for the preservation of the general welfare to immediately adopt the revisions to the proposed rule so that they may be timely implemented during the 2012-2013 school year, and to otherwise ensure that the

emergency rule adopted at the May Regents meeting, as revised and readopted at the July Regents meeting, remains continuously in effect until the effective date of its permanent adoption at a subsequent Regents meeting.

It is anticipated that the proposed rule will be presented to the Board of Regents for adoption as a permanent rule at its September 10-11, 2012 meeting, which is the first scheduled meeting after expiration of the 30-day public comment period for revised rule makings mandated by the State Administrative Procedure Act.