




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

TO: The Honorable the Members of the Board of Education

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: August 29, 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 a permanent rule at the September Regents meeting. Emergency action is also necessary at the September meeting to ensure that the emergency rule adopted at the July Regents meeting remains continuously in effect until the effective date of the permanent rule. A statement of 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 further revised and adopted as emergency actions at both the May and July Regents meetings. Notices of Emergency Adoption and Revised Rule Making were published in the State Register on June 6, 2012 and August 1, 2012, respectively. A copy of the proposed rule 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.

Recommendation

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

VOTED: that subdivision (jj) of section 100.2 of the Regulations of the Commissioner of Education be added, as submitted, effective September 26, 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 September 15, 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 to ensure that the emergency rule adopted at the May 21-22, 2012 Regents meeting and revised and readopted at the July 16-17, 2012 Regents meeting remains continuously in effect until the effective date of the permanent rule.

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 and revised and readopted at the July Regents meeting. The July emergency rule will expire on September 14, 2012. If adopted at the September Regents meeting, the emergency rule will take effect on September 15, 2012 and the permanent rule will take effect on September 26, 2012.

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.

Subdivision (jj) of section 100.2 of the Regulations of the Commissioner of Education is added, effective September 26, 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.

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(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

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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 emergency rules at both the May 21-22, 2012 and the July 16-17, 2012 Regents meetings. Notices of Emergency Adoption and Revised Rule Making were published in the State Register on June 6, 2012 and on August 1, 2012 respectively.

The proposed rule has now been adopted as a permanent rule at the September 10-11, 2012 Regents meeting. Pursuant to SAPA §203(1), the earliest effective date of the proposed amendment, if adopted at the September Regents meeting, would be September 26, 2012, the date a Notice of Adoption will be published in the State Register. However, the July emergency rule will expire on September 14, 2012, 60 days after its filing with the Department of State on July 17, 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 ensure that the emergency rule adopted at the July Regents meeting remains continuously in effect until the effective date of its permanent adoption.