




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(jj) of the Regulations of the Commissioner of Education Relating to Dignity Act Coordinator and School Employee Training programs, to implement the Dignity for All Students Act
DATE: February 4, 2013
AUTHORIZATION(S):

SUMMARY

Issue for Discussion

Should the Board of Regents adopt the proposed amendment of section 100.2(jj) of the Commissioner's Regulations, relating to School Employee Training to implement the 2012 statutory amendments to the Dignity for All Students Act (Dignity Act)?

Reason(s) for Consideration

Required by statute (L. 2012, Ch. 102).

Proposed Handling

The proposed amendment is being presented to the P-12 Education Committee for discussion at the February 2013 Regents meeting.

Background Information

Chapter 102 of the Laws of 2012 amends Article 2 of State Education Law (Ed.L. sections 10 through 18) and Education Law section 801-a to significantly expand the scope and intent of the Dignity Act to include provisions on bullying and cyberbullying and to make the Act applicable in certain instances to conduct occurring off school

property. The statute addresses provisions relating to: (1) instructional requirements (2) codes of conduct; (3) reporting; and (4) policies, guidelines and training.

Proposed amendments to implement the instructional requirements [100.2(c)], code of conduct [100.2(l) & 119.6], and reporting [100.2(kk)] requirements of the Dignity Act were discussed at the January Regents meeting.

The proposed amendment to section 100.2(jj) implements the policies, guidelines and training requirements of the Ch. 102, L. 2012 amendments to the Dignity Act by establishing standards for the School Employee Training program to train school employees and administrators to promote a positive school environment that is free from harassment, bullying (including cyberbullying) and discrimination. Consistent with Chapter 102, the proposed amendment generally expands the school employee training required under section 100.2(jj) for the 2013-14 school year and thereafter to: (i) address bullying and cyberbullying, by conforming the definitions in subdivision (jj) to those used in the code of conduct and reporting regulations, (ii) add additional elements to the required training as prescribed in Chapter 102 and (iii) require that Dignity Act Coordinators have training and certification consistent with Chapter 102.

Specifically, the proposed rule requires each school district, BOCES and charter school to:

(1) establish policies, procedures and guidelines, on or before July 1, 2013, to implement school employee training programs that promote a positive school environment that is free from harassment, bullying and discrimination (including cyberbullying) and to discourage and respond to incidents of harassment, bullying and discrimination,

(2) establish guidelines relating to the development of nondiscriminatory instructional and counseling methods; and

(3) provide training for employees, including school and district administrators that:

- raises awareness and sensitivity to potential acts of harassment, bullying and discrimination directed at students that are committed by students and/or school employees. As required by Chapter 102, the training shall address the social patterns of harassment, bullying and discrimination, the identification and mitigation of such acts, and strategies for effectively addressing problems of exclusion, bias and aggression in educational settings
- enables employees to prevent and respond to incidents of harassment, bullying and discrimination;
- makes school employees aware of the effects of harassment, bullying, cyberbullying, and/or discrimination on students;

- ensures the 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 harassment, bullying, and/or discrimination against students by students and/or school employees; and
- includes safe and supportive school climate concepts in curriculum and classroom management.

The proposed amendment also implements the Ch. 102, L. 2012 amendments to the Dignity Act by establishing standards for the Dignity Act Coordinator. The proposed amendment requires that:

(1) At least one employee in every school shall be designated as a Dignity Act Coordinator, who shall be employed by the school district, BOCES or charter school, as applicable, and be licensed and/or certified by the Commissioner as a classroom teacher, school counselor, school psychologist, school nurse, school social worker, school administrator or supervisor, or superintendent of schools.

(2) The Dignity Act Coordinator shall be provided with:

- training which addresses the social patterns of harassment, bullying 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, and sex;
- training in the identification and mitigation of harassment, bullying and discrimination; and
- training in strategies for effectively addressing problems of exclusion, bias, and aggression in educational settings.

(3) 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:

- listing such information in the code of conduct and updates posted on the Internet web site, if available, provided that a change in the name and/or contact information of a Dignity Act Coordinator shall not be deemed to constitute a revision to the code of conduct so as to require a public hearing;
- posting the information in highly-visible areas of school buildings and making the information available at the district and school-level administrative offices; and
- either including the information in the plain language summary of the code of conduct; or providing the information to parents and persons in parental relation at least once per school year in a manner as determined by the

school, including through electronic communication and/or sending such information home with students.

A Notice of Proposed Rule Making for the proposed amendment will be published in the State Register no later than March 13, 2013. A copy of the proposed amendment is attached. Supporting materials are available upon request from the Secretary to the Board of Regents.

Recommendation

It is recommended that the Regents P-12 Education Committee reach consensus on the intent of the proposed amendment prior to taking action at the May Regents meeting.

Timetable for Implementation

The provisions of Chapter 102 of the Laws of 2012 become effective on July 1, 2013. It is anticipated that the proposed amendment will be presented for action at the May Regents meeting, after publication of a Notice of Proposed Rule Making in the State Register and expiration of the 45-day public comment period prescribed in 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 102 of the Laws of 2012.

Subdivision (jj) of section 100.2 of the Regulations of the Commissioner of Education is amended, effective July 1, 2013, as follows:

(jj) Dignity [For All Students] Act Coordinator and 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 or bullying" means the creation of a hostile environment by conduct or by [verbal] threats, intimidation or abuse, including cyberbullying as defined in Education Law section 11(8), that either:

(a) has or would have the effect of unreasonably and substantially interfering with a student's educational performance, opportunities or benefits, or mental, emotional [or] and/or physical well-being [; or] including conduct , [verbal] threats, intimidation or abuse that reasonably causes or would reasonably be expected to cause emotional harm; or

(b) reasonably causes or would reasonably be expected to cause physical injury to a student or 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]

(c) Such definition shall include acts of harassment or bullying that occur:

(i) on school property, as defined in section 100.2(kk)(1)(i) of this Part; and/or

(ii) at a school function, as defined in section 100.2(kk)(1) of this Part; or

(iii) off school property where such acts create or would foreseeably create a risk of substantial disruption within the school environment, where it is foreseeable that the conduct, threats, intimidation or abuse might reach school property.

(d) For purposes of this subdivision, the term "threats, intimidation or abuse" shall include verbal and non-verbal actions. Acts of harassment or bullying shall include, but not be limited to, 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.

(e) "Emotional harm" that takes place in the context of "harassment or bullying" means harm to a student's emotional well-being through creation of a hostile school environment that is so severe or pervasive as to unreasonably and substantially interfere with a student's education.

(2) On or before July 1, [2012] 2013, each school district and each charter school shall establish policies, procedures and guidelines for its school or schools to implement, commencing with the [2012-2013] 2013-2014 school year and continuing in each school year thereafter, Dignity [for All Students] Act school employee training programs to promote a positive school environment that is free from [discrimination and] harassment, bullying and/or discrimination; and to discourage and respond to incidents of [discrimination and/or] harassment, bullying, and/or discrimination on school property or at a school function, or off school property pursuant to subclause (1)(viii)(c)(iii) of this subdivision. Such policies, procedures and 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 policies, procedures and guidelines shall include, but not be limited to, guidelines relating to the development of nondiscriminatory instructional and counseling methods, and 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, bullying, and/or discrimination directed at students that are committed by students and/or school employees on school property or at a school function, or off school property pursuant to subclause (1)(viii)(c)(iii) of this subdivision; including, but not limited to, [discrimination and/or] harassment, bullying, and/or 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. Such training shall address the social patterns of harassment, bullying and/or discrimination, the identification and mitigation of such acts, and strategies for effectively addressing problems of exclusion, bias and aggression in educational settings; [and]

(b) [training to] enable employees to prevent and respond to incidents of [discrimination and/or] harassment, bullying, and/or discrimination, consistent with Education Law section 13(4);

(c) make school employees aware of the effects of harassment, bullying, cyberbullying, and/or discrimination on students;

(d) ensure the 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 harassment, bullying, and/or discrimination against students by students and/or school employees; and

(e) include safe and supportive school climate concepts in curriculum and classroom management.

[(c)] (f) [such] 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] who shall be:

(i) instructed in the provisions of this subdivision [and];

(ii) 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;

(iii) provided with training which addresses the social patterns of harassment, bullying 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, and sex;

(iv) provided with training in the identification and mitigation of harassment, bullying and discrimination; and

(v) provided with training in strategies for effectively addressing problems of exclusion, bias, and aggression in educational settings.

[(i)] (vi) 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. The Coordinator shall be employed by such school district, BOCES or charter school, as applicable, and be licensed and/or certified by the Commissioner as a classroom teacher, school counselor, school psychologist, school nurse, school social worker, school administrator or supervisor, or superintendent of schools.

[(ii)] (vii) 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; provided that, notwithstanding the provisions of clause 100.2(l)(2)(iii)(a) of this Title, a change in the name and/or contact information of a Dignity Act Coordinator shall not be deemed to constitute a revision to the code of conduct so as to require a public hearing be held pursuant to such clause, and nothing herein shall be deemed to require such public hearing in such instance; and

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

(c) making such information available at the district and school-level administrative offices; and either

[(b)] (d) 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); or

[(c)] (e) providing such information to parents and persons in parental relation [in] at least [one] once per school year [district or school mailing or other method of distribution] in a manner as determined by the school, including, but not limited to, through electronic communication and/or sending such information home with [each student] students [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)] (viii) In the event a Dignity Act Coordinator vacates his or her position, another [school] eligible 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)] (vi) 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] eligible 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.