
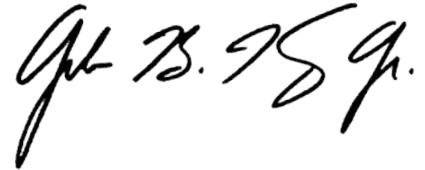




THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK / ALBANY, NY 12234

TO: The Honorable the Members of the Board of Regents
FROM: Ken Slentz 
SUBJECT: Amendment of sections 100.2(c), 100.2(l) & 119.6, and 100.2(kk) of the Commissioner's Regulations, Relating to the Dignity for All Students Act
DATE: April 11, 2013
AUTHORIZATION(S):





SUMMARY

Issue for Decision (Consent Agenda)

Should the Board of Regents adopt the proposed amendments of sections 100.2(c), 100.2(l) and 119.6, and 100.2(kk) of the Commissioner's Regulations, 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 amendments are being presented to the Full Board for action at the April 2013 Regents meeting.

Procedural History

The proposed amendments were discussed by the P-12 Education Committee at the January 2013 Regents meeting. Notices of Proposed Rule Making were published in the State Register on February 13, 2013. A copy of the proposed amendments and assessments of public comment are attached. Supporting materials are available upon request from the Secretary to the Board of Regents.

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.

1. 100.2(c) Instructional requirements

The proposed amendment to section 100.2(c) of the Commissioner's Regulations implements instructional requirements consistent with Chapter 102. As amended, section 100.2(c) extends the required instruction for all public school students to explicitly include bullying and cyberbullying. In addition, the regulation would require, for all public school students including charter school students, that required instruction supporting development of a school environment free of harassment, bullying and/or discrimination have an emphasis on discouraging acts of harassment, bullying (including cyberbullying) and discrimination and include instruction in the safe, responsible use of the Internet and electronic communications.

2. 100.2(l) and 119.6 Code of Conduct

The proposed amendment to sections 100.2(l) and 119.6 of the Commissioner's Regulations revises the regulations to conform to and implement the code of conduct provisions of Chapter 102 by including:

- provisions prohibiting harassment, bullying (including cyberbullying) and discrimination against any student by employees or students, that creates a hostile environment by conduct or by threats, intimidation or abuse that either: (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, including conduct, threats, intimidation or abuse that reasonably causes or would reasonably be expected to cause emotional harm; or (2) 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 shall include acts of harassment and/or bullying that occur (i) on school property; or (ii) at a school function 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;
- provisions for responding to acts of harassment, bullying/cyberbullying, which incorporate a progressive model of student discipline that includes measured,

balanced and age-appropriate remedies and procedures that make appropriate use of prevention, education, intervention and discipline, and considers among other things, the nature and severity of the offending student's behavior(s), the developmental age of the student, the previous disciplinary record of the student and other extenuating circumstances, and the impact the student's behaviors had on the individual(s) who was physically injured and/or emotionally harmed. Responses shall be reasonably calculated to end the harassment, bullying, and/or discrimination, prevent recurrence, and eliminate the hostile environment; and

- provisions requiring that charter schools include in their disciplinary rules and procedures pursuant to Education Law section 2851(2)(h) or, if applicable, in their codes of conduct, similar provisions prohibiting harassment, bullying/cyberbullying and discrimination.

3. 100.2(kk) Reporting¹

The proposed amendment to section 100.2(kk) of the Commissioner's Regulations revises the regulation to conform to and implement the reporting requirements of Chapter 102 by adding provisions for reporting of incidents of harassment, bullying/cyberbullying and discrimination to the superintendent, principal, or their designee, including requirements that:

- School employees who witness harassment, bullying, and/or discrimination or receive an oral or written report of such acts shall promptly orally notify the principal, superintendent, or their designee not later than one school day after such employee witnesses or receives a report of such acts, and shall also file a written report with the principal, superintendent, or their designee no later than two school days after making an oral report.
- The principal, superintendent or the principal's or superintendent's designee shall lead or supervise the thorough investigation of all reports of harassment, bullying and/or discrimination, and ensure that such investigation is completed promptly after receipt of any written reports.
- When an investigation verifies a material incident of harassment, bullying, and/or discrimination, the superintendent, principal, or designee shall take prompt action, reasonably calculated to end the harassment, bullying, and/or discrimination, eliminate any hostile environment, create a more positive school culture and climate, prevent recurrence of the behavior, and ensure the safety of the student or students against whom such behavior was directed.

¹ The definitions of "school property" and "school employee" are inclusive of facilities and employees of charter schools.

- The principal, superintendent, or their designee shall notify promptly the appropriate local law enforcement agency when it is believed that any harassment, bullying or discrimination constitutes criminal conduct.
- The principal shall provide a regular report, at least once during each school year, on data and trends related to harassment, bullying, and/or discrimination to the superintendent.
- Pursuant to Education Law section 13, retaliation by any school employee or student shall be prohibited against any individual who, in good faith, reports or assists in the investigation of harassment, bullying, and/or discrimination.

Recommendation

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

VOTED: That paragraph (2) of subdivision (c) of section 100.2 of the Regulations of the Commissioner of Education is amended, as submitted, effective July 1, 2013, and it is further

VOTED: That paragraph (2) of subdivision (l) of section 100.2 and section 119.6 of the Regulations of the Commissioner of Education, are amended, as submitted, effective July 1, 2013, and it is further

VOTED: That subdivision (kk) of section 100.2 of the Regulations of the Commissioner of Education is amended, as submitted, effective July 1, 2013.

Timetable for Implementation

If adopted at the April Regents meeting, the proposed amendments will take effect on July 1, 2013, which is the date the provisions of Chapter 102 of the Laws of 2012 become effective.

AMENDMENT OF THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to Education Law sections 101, 207, 305, 801-a and 2854, and Chapter 102 of the Laws of 2012.

Paragraph (2) of subdivision (c) of section 100.2 of the Regulations of the Commissioner of Education is amended, effective July 1, 2013, as follows:

(2) for all public school students, instruction that supports development of a school environment free of [discrimination and] harassment, bullying and/or discrimination as required by the Dignity For All Students Act (article 2 of the Education Law), with an emphasis on discouraging acts of harassment, bullying and/or discrimination, including but not limited to instruction that raises students' awareness and sensitivity to [discrimination 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, and instruction in the safe, responsible use of the Internet and electronic communications; provided that in public schools other than charter schools, such instruction shall be provided as part of a component on civility, citizenship and character education in accordance with section 801-a of the Education Law;

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 102 of the Laws of 2013.

1. Paragraph (2) of subdivision (l) of section 100.2 of the Regulations of the Commissioner of Education is amended, effective July 1, 2013, as follows:

(2) Code of Conduct

(i) . . .

(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 at school functions 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 or persons in parental relation;

(b) provisions prohibiting [discrimination and] harassment, bullying, and/or discrimination against any student, by employees or students [on school property or at a school function,] that creates a hostile school environment by conduct [, with or without physical contact and/or by verbal] or by threats, intimidation or abuse, including cyberbullying as defined in Education Law section 11(8), [of such a severe nature] that either:

(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, including conduct, threats, intimidation or abuse that reasonably causes or would reasonably be expected to cause emotional harm; or

(2) 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,

(3) Such conduct shall include acts of harassment and/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.

(4) For purposes of this paragraph, the term "threats, intimidation or abuse" shall include verbal and non-verbal actions.

(5) For purposes of this paragraph, "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.

(6) Such conduct shall include, but is not limited to [, threats, intimidation, or abuse] acts 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;

(c) standards and procedures to assure the security and safety of all students and school personnel;

(d) . . .

(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) disciplinary measures to be taken for incidents on school property or at school functions involving harassment, bullying and/or discrimination;

[(g)] (h) provisions for responding to acts of [discrimination, and] harassment, bullying, and/or discrimination against students by employees or students pursuant to clause (b) of this subparagraph which, with respect to such acts against students by students, incorporate a progressive model of student discipline that includes measured, balanced and age-appropriate remedies and procedures that make appropriate use of prevention, education, intervention and discipline, and considers among other things, the nature and severity of the offending student's behavior(s), the developmental age of the student, the previous disciplinary record of the student and other extenuating circumstances, and the impact the student's behaviors had on the individual(s) who was

physically injured and/or emotionally harmed. Responses shall be reasonably calculated to end the harassment, bullying, and/or discrimination, prevent recurrence, and eliminate the hostile environment. This progressive model of student discipline shall be consistent with the other provisions of the code of conduct;

[(h)] (i) . . .

[(i)] (j) . . .

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

[(k)] (l) provisions setting forth the procedures by which local law enforcement agencies shall be notified promptly of code violations, including but not limited to incidents of harassment, bullying, and/or discrimination, which may constitute a crime.

[(l)] (m) . . .

[(m)] (n) . . .

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

[(o)] (p) . . .

[(p)] (q) . . .

[(q)] (r) 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]

[(r)] (s) 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, bullying and discrimination against students by students and/or school employees; and including safe and supportive school climate concepts in the curriculum and classroom management; and

(t) a provision prohibiting retaliation against any individual who, in good faith, reports or assists in the investigation of harassment, bullying, and/or discrimination.

(iii) Additional responsibilities.

(a) . . .

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

(1) . . .

(2) . . .

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

(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

(5) . . .

2. Section 119.6 of the Regulations of the Commissioner of Education is amended, effective July 1, 2013, as follows:

§119.6 Policies against [discrimination and] harassment, bullying, and discrimination.

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, bullying, and/or discrimination 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] or by threats, intimidation or abuse, including cyberbullying as defined in Education Law section 11(8), [of such a severe nature] that either:

(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, including conduct, threats, intimidation or abuse that reasonably causes or would reasonably be expected to cause emotional harm; or

(2) 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.

(3) Such conduct shall include acts of harassment and/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.

(4) For purposes of this section, the term “threats, intimidation or abuse” shall include verbal and non-verbal actions.

(5) For purposes of this section, "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.

(6) Such conduct shall include, but is not limited to [, threats, intimidation, or abuse] acts 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, bullying, and/or discrimination 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;

(c) guidelines on promoting a safe and supportive school climate while discouraging, among other things, [discrimination or] harassment, bullying, and/or discrimination against students by students and/or school employees; and including

safe and supportive school climate concepts in the curriculum and classroom management.

(d) provisions which enable students, parents and persons in parental relation to make an oral or written report of harassment, bullying, and/or discrimination to teachers, administrators, and other school personnel that the school district deems appropriate;
and

(e) a provision prohibiting retaliation against any individual who, in good faith, reports or assists in the investigation of harassment, bullying, and/or discrimination.

AMENDMENT OF THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to Education Law sections 11, 15, 16, 101, 207, 215, 305 and 2854(1)(b) and Chapter 102 of the Laws of 2012.

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

(kk) Dignity Act reporting requirements.

(1) Definitions. For purposes of 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 and 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.

(ix) "Material Incident of [Discrimination and/or] Harassment, Bullying, and/or Discrimination" means a single verified incident or a series of related verified incidents where a student is subjected to [discrimination and/or] harassment, bullying and/or discrimination by a student and/or employee 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 severe or pervasive nature that:

(a) 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

(b) reasonably causes or would reasonably be expected to cause a student to fear for his or her physical safety]. In addition, such term shall include a verified incident or series of related incidents of harassment or bullying that occur off school property, meets the definition in subclause (1)(viii)(c)(iii) of this subdivision, and is the subject of a written or oral complaint to the superintendent, principal, or their designee, or other school employee. 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 practice, disability, sexual orientation, gender, 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.

(2) Reporting of incidents to the superintendent, principal, or designee.

(i) School employees who witness harassment, bullying, and/or discrimination or receive an oral or written report of harassment, bullying, and/or discrimination shall promptly orally notify the principal, superintendent, or their designee not later than one school day after such employee witnesses or receives a report of harassment, bullying, and/or discrimination, and.

(ii) such school employee shall also file a written report in a manner prescribed by, as applicable, the school district, board of cooperative educational services (BOCES) or charter school with the principal, superintendent, or their designee no later than two school days after making an oral report.

(iii) the principal, superintendent or the principal's or superintendent's designee shall lead or supervise the thorough investigation of all reports of harassment, bullying and/or discrimination, and ensure that such investigation is completed promptly after receipt of any written reports made under Education Law section 13.

(iv) When an investigation verifies a material incident of harassment, bullying, and/or discrimination, the superintendent, principal, or designee shall take prompt action, consistent with the district's code of conduct including but not limited to the

provisions of section 100.2(l)(2)(ii)(h), reasonably calculated to end the harassment, bullying, and/or discrimination, eliminate any hostile environment, create a more positive school culture and climate, prevent recurrence of the behavior, and ensure the safety of the student or students against whom such behavior was directed.

(v) The principal, superintendent, or their designee shall notify promptly the appropriate local law enforcement agency when it is believed that any harassment, bullying or discrimination constitutes criminal conduct.

(vi) The principal shall provide a regular report on data and trends related to harassment, bullying, and/or discrimination to the superintendent. For the purpose of this subdivision, the term "regular report" shall mean at least once during each school year, and in a manner prescribed by, as applicable, the school district, BOCES or charter school.

(3) Reporting of material incidents to the commissioner.

(i) For the [2012-2013] 2013-2014 school year and for each succeeding school year thereafter, each school district, board of cooperative educational services (BOCES) and charter school shall submit to the commissioner an annual report of material incidents of [discrimination and/or] harassment, bullying, and/or discrimination, that occurred in such school year, in accordance with Education Law section 15 and this subdivision. Such report shall be submitted in a manner prescribed by the commissioner, on or before the basic educational data system (BEDS) reporting deadline or such other date as determined by the commissioner.

(ii) For purposes of reporting pursuant to this subdivision, a school district, BOCES or charter school shall include in its annual report all material incidents of [discrimination and/or] harassment, bullying, and/or discrimination that:

(a) are the result of the investigation of a written or oral complaint made to the superintendent, [school] principal or their designee, [or other school administrator responsible for school discipline,] or to any other employee; or

(b) are otherwise directly observed by such superintendent, principal or [administrator,] their designee, or by any other employee regardless of whether a complaint is made.

(iii) Such report shall include information describing the specific nature of the incident, including, but not limited to:

(a) the type(s) of bias involved (actual or perceived race, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender, sex, or other). Where multiple types of bias are involved, they shall all be reported;

(b) whether the incident resulted from student and/or employee conduct;

(c) whether the incident involved physical contact and/or [verbal] threats, intimidation or abuse, including cyberbullying as defined in Education Law section 11(8);

(d) the location where the incident occurred (on school property or at a school function, or off school property, where applicable).

[(3)] (4) Protection of people who report discrimination and/or harassment.

(i) Pursuant to Education Law section 16, any person having reasonable cause to suspect that a student has been subjected to [discrimination and/or] harassment, bullying, and/or discrimination by an employee or student, on school grounds or at a

school function, who acting reasonably and in good faith, either reports such information to school officials, to the commissioner, or to law enforcement authorities or otherwise initiates, testifies, participates or assists in any formal or informal proceedings under this subdivision, shall have immunity from any civil liability that may arise from the making of such report or from initiating, testifying, participating or assisting in such formal or informal proceedings.

(ii) No school district, BOCES or charter school, or an employee thereof, shall take, request or cause a retaliatory action against any such person who, acting reasonably and in good faith, either makes such a report or initiates, testifies, participates or assists in such formal or informal proceedings.

(iii) Pursuant to Education Law section 13, retaliation by any school employee or student shall be prohibited against any individual who, in good faith, reports or assists in the investigation of harassment, bullying, and/or discrimination.

PROPOSED AMENDMENT OF SECTION 100.2(c) OF THE REGULATIONS OF THE COMMISSIONER OF EDUCATION PURSUANT TO EDUCATION LAW SECTIONS 101, 207, 305, 801-a AND 2854, AND CHAPTER 102 OF THE LAWS OF 2012, RELATING TO INSTRUCTIONAL REQUIREMENTS TO IMPLEMENT THE DIGNITY FOR ALL STUDENTS ACT

ASSESSMENT OF PUBLIC COMMENT

Since publication of a Notice of Proposed Rule Making in the State Register on February 13, 2013, the State Education Department received the following comments.

COMMENT:

There is nothing in the Dignity Act, Education Law § 801-a or any related statutory provision that permits or requires the State Education Department to dictate to charter schools instructional programming.

DEPARTMENT RESPONSE:

The Department acknowledges that charter schools are not required to provide the instructional component on civility, citizenship and character education required to be provided under Education Law §801-a.

However, the Department has previously determined that exclusion of charter schools from any instructional requirement relating to prevention of harassment and discrimination would be inconsistent with the intent of the Dignity for All Students Act (L.2010, Ch 482 - "Dignity Act"), which is to afford all students in public schools an environment free of discrimination and harassment. Accordingly, in 2012, the Board of Regents amended Commissioner's Regulation section 100.2(c) to require charter schools to provide instruction that supports development of a school environment free of

discrimination and harassment, as required by the Dignity Act, including, but not limited, to instruction that raises awareness and sensitivity 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 or sex.

Subsequently, Chapter 102 of the Laws of 2012 was enacted to significantly expand the scope and intent of the Dignity Act to include provisions on bullying and cyberbullying. The proposed amendment is necessary to implement the instructional requirements of Chapter 102 of the Laws of 2012 and, consistent with that statute, merely extends the required instruction for all public school students, including charter school students, to explicitly include bullying and cyberbullying, and instruction in the safe, responsible use of the Internet and electronic communications.

COMMENT:

Concern was expressed that the proposed amendment exempts charter schools from the requirement to provide instruction in civility, citizenship and character education that includes awareness and sensitivity to discrimination or harassment and civility in the relations of people with the characteristics protected by the Dignity Act - i.e. race, weight, national origin, ethnic groups, religions, religious practices, mental or physical ability, sexual orientation, gender identity and expression), or sex.

DEPARTMENT RESPONSE:

The comment misinterprets the proposed amendment. As discussed in the Department's response to the comment appearing above, the Department has previously determined that exclusion of charter schools from any instructional requirement relating to prevention of harassment and discrimination would be

inconsistent with the intent of the Dignity Act, and in 2012 the Board of Regents amended Commissioner's Regulation section 100.2(c) to require charter schools to provide instruction that supports development of a school environment free of discrimination and harassment, as required by the Dignity Act, including but not limited to, instruction that raises awareness and sensitivity 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 or sex. The proposed amendment, consistent with L. 2010, Ch. 102, merely extends the required instruction for all public school students, including charter school students, to explicitly include bullying and cyberbullying, and instruction in the safe, responsible use of the Internet and electronic communications.

PROPOSED AMENDMENTS OF SECTIONS 100.2(I) AND 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 102 OF THE LAWS OF 2012, RELATING TO 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 February 13, 2013, the State Education Department received the following comments.

1. COMMENT:

The proposed amendment includes all the various policy and guideline components from the Dignity for All Students Act (L.2010, Ch 482 - "Dignity Act"), as amended by Chapter 102 of the Laws of 2012) into the Code of Conduct. However, we believe the language of the law indicates that these requirements are separate from the Code of Conduct. Education Law §12(1) provides that no student shall be subjected to harassment, bullying or discrimination, and Education Law §12(2) specifically directs that the Code of Conduct include the provision in §12(1). However, Education Law §13 requires that school districts establish policies and procedures intended to create a school environment that is free from harassment, bullying and discrimination, and directs that districts "include appropriate references to the provisions of the school district's code of conduct " in such policies and procedures. This suggests that the Dignity Act requires more than adding provisions to the Code of Conduct. We believe the law requires, and we recommend, a "bullying" policy be developed which is separate from the Code of Conduct. Codes of Conduct already include many provisions and the

Dignity Act element could easily get lost and overlooked. In addition, placing the Dignity Act provisions in a separate policy document would facilitate parents and students in locating the district's Dignity Act requirements.

DEPARTMENT RESPONSE

The commenter is reading Education Law §12 too narrowly by appearing to say that Education Law §12(2) merely requires the code of conduct to contain an age-appropriate version of the policy contained in Education Law §12(1), and nothing else. However, Education Law §12(2) also states that a summary of the policy must be included in any summaries required by Education Law §2801. The State Education Department believes that this means Education Law §12(2) requires that the code of conduct must include more than the provision contained in Education Law §12(1) because it would not be possible to "summarize" any further the brief prohibition language against harassment, bullying and discrimination contained in §12(1). In addition, Education Law §12(2)'s reference to an age-appropriate version of the policy contained in Education Law 12(1) requires more than simply restating the provisions of Education Law 12(1) in an age appropriate manner.

More importantly, the code of conduct governs the conduct of students, teachers, other school personnel and visitors. Thus, when Education Law §§12 and 13 are read together and the intent of the code of conduct is considered, it is a reasonable interpretation of the Department's statutory authority to require the field to include its Dignity Act related policy in the code of conduct. In addition, the Department believes that it is both practical and functional for all policies addressing the conduct of students, faculty, school staff, and visitors be compiled into a code of conduct. Nevertheless, this

does not preclude a school district from further elaborating on its policy in a separate document, which could be referenced in its code of conduct.

2. COMMENT:

Section 100.2(l)(2)(ii)(b), which requires a code of conduct to include "provisions prohibiting harassment, bullying, and/or discrimination against any student, by employees or students that creates a hostile environment ", should be revised to refer to ". . . a hostile school environment." Otherwise, the language suggests that school districts are responsible for the environment everywhere.

DEPARTMENT RESPONSE

The Department agrees with this comment. A nonsubstantial revision has been made to section 100.2(l)(2)(ii)(b) to refer to ". . . a hostile school environment" in order to clarify that Dignity Act addresses harassment, bullying and discrimination of students within the school environment.

3. COMMENT:

Why was the phrase "of such a severe nature" removed from section 100.2(l)(2)(ii)(b)?

DEPARTMENT RESPONSE:

The phrase was removed in order to conform the regulation to the Dignity Act, as amended by Chapter 102 of the Laws of 2012. The phrase "of such a severe nature" does not appear in the statute, and the proposed amended provision more accurately reflects the statutory requirements.

4. COMMENT:

Section 100.2(l)(2)(ii)(b) would benefit by cross-referencing the definition of "harassment or bullying" in section 100.2(kk)(1)(viii) to avoid repetitious language.

DEPARTMENT RESPONSE:

The Department believes that a revision is not appropriate here, because the definition in section 100.2(kk)(1)(viii) applies to the reporting requirements under the Dignity Act and refers to only "harassment or bullying"; and the provision in section 100.2(l)(2)(ii)(b) refers to "harassment, bullying, and/or discrimination" and is thus broader in application.

5. COMMENT:

Is section 100.2(l)(2)(ii)(b)(4) appropriate in saying "for purposes of this paragraph"?

DEPARTMENT RESPONSE:

Yes, because the provision is applicable to the entire Code of Conduct regulation, which is found in paragraph (2) of subdivision (l) of section 100.2.

6. COMMENT:

Clauses (g) and (h) of section 100.2(l)(2)(ii) should be combined. Clause (g) addresses discipline for harassment/bullying, while clause (h) addresses discipline, prevention and remediation. Why mention discipline in one context using the progressive model language in (h), but not include the language in (g)?

DEPARTMENT RESPONSE:

The Department does not believe it would be appropriate to merge these provisions. The provisions in (h) concerning a progressive model apply to student discipline. However, codes of conduct apply to students, teachers and other school

personnel and visitors. Therefore, the provisions in clause (g) regarding disciplinary measures to be taken for incidents involving harassment, bullying and/or discrimination can include such conduct by students, teachers, school personnel and others and therefore are of broader application than clause (h), which applies only to students. Accordingly, it is appropriate to place such provisions in separate clauses.

7. COMMENT:

The State Education Department is commended for its thoughtful approach to implementing the Dignity for All Students Act. 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 implement.

DEPARTMENT RESPONSE:

The Department appreciates the support as we work to ensure that all students are educated in a safe and supportive environment.

8. COMMENT:

There is nothing in the Dignity Act or any related statutory provision that permits or requires the State Education Department to dictate to charter schools how to draft their codes of conduct.

DEPARTMENT RESPONSE:

The Department disagrees. Education Law §2854(1)(b) provides that charter schools shall meet the same health and safety, civil rights, and student assessment requirements applicable to other public schools, except as otherwise specifically provided in Article 56 of the Education Law. The Dignity Act imposes certain health, safety and civil rights requirements on public schools. Consistent with the Dignity Act,

section 119.6 was added to in 2012 to require charter schools to include in their disciplinary rules and procedures pursuant to Education Law section 2851(2)(h) or, if applicable, in their codes 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.

Subsequently, Chapter 102 of the Laws of 2012 was enacted 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 Department lacks authority to revise statutory requirements and/or exempt charter schools from these requirements.

The proposed amendment is necessary to implement the code of conduct requirements of Chapter 102 of the Laws of 2012 and, consistent with that statute, amends section 119.6 to refer to harassment, bullying and discrimination, including cyberbullying; provide a definition of "emotional harm"; include acts of harassment and/or bullying that occur 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; include provisions which enable students, parents and persons in parental

relation to make an oral or written report of harassment, bullying, and/or discrimination to teachers, administrators, and other school personnel that the school district deems appropriate; and includes a provision prohibiting retaliation against any individual who, in good faith, reports or assists in the investigation of harassment, bullying, and/or discrimination.

PROPOSED AMENDMENT OF SECTION 100.2(kk) OF THE REGULATIONS OF THE COMMISSIONER OF EDUCATION PURSUANT TO EDUCATION LAW SECTIONS 11, 13, 15, 16, 101, 207, 305, 801-a AND 2854, AND CHAPTER 102 OF THE LAWS OF 2012, RELATING TO REPORTING REQUIREMENTS TO IMPLEMENT THE DIGNITY FOR ALL STUDENTS ACT

ASSESSMENT OF PUBLIC COMMENT

Since publication of a Notice of Proposed Rule Making in the State Register on February 13, 2013, the State Education Department received the following comments.

1. COMMENT:

The definition of "discrimination" in section 100.2(kk)(1)(vii) is inadequate and should be improved.

DEPARTMENT RESPONSE:

The comment is beyond the scope of the proposed amendment. The discrimination definition in section 100.2(kk)(1)(vii) has remained unchanged since its adoption by the Board of Regents in 2012, and has not been proposed for amendment pursuant to the current pending rule making.

The purpose of the proposed amendment is to conform the Commissioner's Regulations to, and otherwise implement, the reporting requirements of the Dignity for All Students Act (L.2010, Ch 482 - "Dignity Act"), as amended by Chapter 102 of the Laws of 2012. Consistent with Chapter 102, the proposed amendment revises the regulation to add provisions for reporting of incidents of harassment, bullying/cyberbullying and discrimination to the superintendent, principal, or their designee.

2. COMMENT:

There is a mislabeling in section 100.2(kk)(2), consisting of two subparagraphs both being labeled (iii).

DEPARTMENT RESPONSE:

Nonsubstantial changes have been made to section 100.2(kk)(2) to correct the mislabeling.

3. COMMENT:

Section 100.2(kk)(3)(ii)(a) should be revised to indicate that the incidents being reported have been verified as the result of the investigation.

DEPARTMENT RESPONSE:

Section 100.2(kk)(3)(ii) relates to the reporting of material incidents of harassment, bullying and/or discrimination to the Commissioner. Section 100.2(kk)(1)(ix) defines a "material incident of harassment, bullying, and/or discrimination" as a "single verified incident or a series of related verified incidents. . . . [emphasis added]." Therefore, there is no need to restate "verified" elsewhere in the rule.

4. COMMENT:

The provision in section 100.2(kk)(3)(b) that requires reporting of material incidents of harassment, bullying and/or discrimination that "are otherwise directly observed by such superintendent, principal or their designee, or by any other employee regardless of whether a complaint is made" is problematic because if they observed such incidents, they are required to make a written report (which seems to mean the same thing as filing a complaint); and even if such incidents were directly observed,

wouldn't an investigation still be necessary to ensure they perceived the incident correctly and that the incident was indeed a "material" incident?

DEPARTMENT RESPONSE:

The comment appears to reflect confusion about the differences in reporting requirements at the local level versus the State level. Education Law §13 contains various reporting requirements and each of these reporting requirements have their own sets of obligations. Education Law §13(1)(c) requires school employees who witness harassment, bullying or discrimination, or receive an oral or written report of harassment, bullying or discrimination, to promptly orally notify the principal, superintendent or the principal's or superintendent's designee not later than one day after such school employee witnesses or receives a report of harassment, bullying or discrimination and to file a written report with the principal, superintendent or the principal's or superintendent's designee not later than two days after making such report. This provision does not contain the word "verified" and, thus, the statute requires the reporting of all incidents at this stage of the process regardless of whether the incident has been "verified as the result of an investigation" as the comment is proposing here. Proposed 8 NYCRR §100.2(kk)(2)(i) and (ii) implement these statutory requirements.

Education Law §13(1)(d) then requires the principal, superintendent or the principal or superintendent's designee to lead or supervise the thorough investigation of all reports of harassment, bullying and discrimination, and to ensure that such investigation is completed promptly after receipt of any written reports made under this

section. This provision also does not contain the word "verified." Proposed 8 NYCRR §100.2(kk)(2)(iii) implements these statutory requirements.

Education Law §13(1)(e) requires the school, when an investigation reveals any such verified harassment, bullying or discrimination, to take prompt actions reasonably calculated to end the harassment, bullying or discrimination, eliminate any hostile environment, create a more positive school culture and climate, prevent reoccurrence of the behavior, and ensure the safety of the student or students against whom such harassment, bullying or discrimination was directed. This is the first time the words "verified" and "investigation" are used together in this section of the Dignity statute. Pursuant to this statutory provision, schools are required to take certain actions only after an investigation verifies that an incident of harassment, bullying or discrimination has occurred. Proposed 8 NYCRR §100.2(kk)(2)(iv) implements these statutory requirements.

Pursuant to the definition of "material incidents of harassment, bullying and/or discrimination" in section 100.2(kk)(1)(ix), only those directly-observed incidents that are verified through investigation are required to be reported to the Commissioner of Education pursuant to 100.2(kk)(3).

5. COMMENT:

There needs to be resolution of the apparent inconsistency between the VADIR system, which requires school districts to report in item 20 incidents of bullying and harassment that haven't necessarily been founded, and the Dignity Act reporting system, which requires reporting of verified incidents of harassment, bullying and/or discrimination.

DEPARTMENT RESPONSE:

The comment is beyond the scope of the proposed rule making, the purpose of which is to conform the Commissioner's Regulations to, and otherwise implement, the reporting requirements of the Dignity for All Students Act (L.2010, Ch 482 - "Dignity Act"), as amended by Chapter 102 of the Laws of 2012. Consistent with Chapter 102, the proposed amendment revises the regulation to add provisions for reporting of incidents of harassment, bullying/cyberbullying and discrimination to the superintendent, principal, or their designee.

In any event, the resolution of any perceived inconsistency between the VADIR and Dignity Act reporting systems would be more appropriately addressed in guidance than in regulation. Although the intent of VADIR and the Dignity Act are related to each other in some ways, their requirements, including, but not limited to, reporting requirements, and definitions are separate and distinct from one another. Thus, the Department determined that, due to these differences, the Dignity Act's reporting system should be separate and distinct from the VADIR system.

6. COMMENT:

Section 100.2(kk)(3)(iii)(a) of the proposed rule continues to be a concern. Asking school districts to report by the type of bias involved in such detail will generate data that isn't meaningful. The differences between race, color, national origin, and ethnic group are difficult to recognize. It would make more sense to collapse the twelve reporting categories into six: (1) race – ethnicity – national origin; (2) religion – religious practice; (3) weight; (4) disability; (5) sex – gender – sexual orientation; and (6) other.

In addition the proposed rule doesn't indicate who determines the category (the complainant, the investigator, or the Dignity Act Coordinator).

DEPARTMENT RESPONSE

Section 15 of the Dignity Act statute, as amended by Chapter 102 of the Laws of 2012, requires the Commissioner to create a procedure under which material incidents of harassment, bullying and discrimination are reported to the Department on at least an annual basis, and further provides that “[s]uch procedure shall provide that such reports shall, whenever possible, also delineate the specific nature of such incidents of harassment, bullying and discrimination” Combining the categories specified in the statute will contradict the intent of this section, which is to define the underlying basis for material incidents of harassment, bullying, and/or discrimination. It is the responsibility of the school district submitting the report to the Department to determine whether an incident involves one or more of the specified categories. The Department has issued guidance that provides some definitions for these terms that the school district can use to determine what category or categories and incident should be reported in.

7. COMMENT:

The proposed rule does not make clear that schools will need to make reports that include information describing the specific nature of incidents of discrimination and harassment, including the type of bias involved (including multiple forms of bias), whether the incident resulted from student or employee conduct, the nature of the incident, and the location of the incident. School districts will need to make a report once per year, however the guidance and reporting mechanism should provide schools

with the ability to conduct a real time analysis of data collected about their school climate.

DEPARTMENT RESPONSE

The Department disagrees. Since its adoption in 2012, section 100.2(kk)(3)(iii) has required the annual report to the Department to include information describing the specific nature of incidents including: (a) the type(s) of bias involved (including multiple types of bias); (b) whether the incident resulted from student and/or employee conduct; (c) whether the incident involved physical contact and/or verbal threats, intimidation or abuse; and (d) the location where the incident occurred. Furthermore, in order to conform the regulation to Chapter 102 of the Laws of 2012, the proposed amendment would also require reporting of cyberbullying and, where applicable, incidents occurring off school property

The exact method used within a school district to record data in real time is a local decision. However, the proposed amendment does require the principal to provide a regular report on data and trends related to harassment, bullying, and/or discrimination to the superintendent of schools.

8. COMMENT:

The proposed amendment would impose additional burdensome administrative requirements on charter schools. Charter schools should be exempt from reporting requirements under Sections 100.2(kk)(2)(i)-(ii); 100.2(kk)(2)(v); and 100.2(kk)(3) for the following reasons: No duplicative obligation to report both verbally and in writing should be imposed on school staff; it is unreasonable to provide a written report prior to an investigation; and SED lacks the authority to dictate who at a charter school is required

to take on administrative burdens such as report writing. No written reporting requirements reside with our instructional staff.

DEPARTMENT RESPONSE

The citations noted reflect the language and requirements in the statute, which require school employees who witness harassment, bullying or discrimination, or receive an oral or written report of such conduct, to promptly orally, notify the principal, superintendent or designee and file a written report [Education Law §13(1)(c)]; require the principal, superintendent or designee to notify promptly the appropriate law enforcement agency when it is believed that any harassment, bullying or discrimination constitutes criminal conduct [Education Law §13(1)(i)]; and require the annual reporting of material incidents of harassment, bullying and/or discrimination (Education Law §15). In addition, Education Law §2854(1)(b) provides that charter schools shall meet the same health and safety, civil rights, and student assessment requirements applicable to other public schools, except as otherwise specifically provided in Article 56 of the Education Law. The Dignity Act imposes certain health, safety and civil rights requirements on public schools. The Department lacks authority to revise statutory requirements and/or exempt charter schools from these requirements.