



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

TO: The Honorable Members of the Board of Regents

FROM: John L. D'Agati *John L. D'Agati*

SUBJECT: Proposed Amendments to Section 52.21 and Part 80 of the Regulations of the Commissioner of Education and the Addition of a New Subpart 57-4 to the Regulations of the Commissioner of Education Relating to Coursework or Training in Harassment, Bullying and Discrimination Prevention and Intervention

DATE: May 15, 2013

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AUTHORIZATION(S):

SUMMARY

Issue for Decision (Consent Agenda)

Should the Board of Regents amend section 52.21 and Part 80, and add a new Subpart 57-4 to the Regulations of the Commissioner of Education, relating to requirements for coursework or training in harassment, bullying and discrimination prevention and intervention as prescribed in the Dignity for All Students Act ("Dignity Act")?

Reason(s) for Consideration

Required by State statute.

Proposed Handling

This item will come before the Full Board for adoption as a permanent rule at its May 2013 meeting.

Procedural History

A Notice of Proposed Rule Making concerning the proposed amendment will be published in the State Register on March 13, 2013. A copy of the proposed amendment is attached as Attachment A.

Background Information

The Dignity for All Students Act (DASA) added Article 2 to the Education Law (Education Law §§10 through 18), to require, among other things, school districts to create policies and guidelines to be used in school training programs to discourage the development of discrimination or harassment and to enable employees to prevent and respond to discrimination or harassment. These provisions took effect on July 1, 2012.

In June 2012, the Legislature enacted Chapter 102 of the Laws of 2012, which amended the Dignity Act to include a requirement that school professionals applying for a certificate or license on or after July 1, 2013 complete training on the social patterns of harassment, bullying and discrimination.

In response to the new law, the Department consulted with a work group, which was comprised of representatives of teachers, administrators, school social workers, school counselors, school guidance counselors, school psychologists, superintendents, school boards, teacher education program faculty, GLESN and Empire Pride Agenda to seek recommendations on how many hours and the types of training needed to ensure that school personnel have adequate training in harassment, bullying and discrimination. The work group recommends that the following actions be taken:

- Part 52 of the Commissioner's Regulations be amended to require teacher and school leadership preparation programs to include at least six hours of training in Harassment, Bullying and Discrimination Prevention and Intervention.
- A new Subpart 57-4 of the Commissioner's Regulations shall be added to establish standards under which the Department will approve providers of this training.
- Part 80 of the Commissioner's Regulations be amended to require that anyone applying for an administrative or supervisory service, classroom teaching service or school service certificate or license on or after July 1, 2013, shall have completed at least six clock hours of coursework or training in Harassment, Bullying and Discrimination Prevention and Intervention.

This item was brought as a discussion item to the January Regents meeting. At that meeting, the Board requested additional information regarding the qualifications of the providers and what the content of the workshop would be.

Subsequent to the January Regents meeting, the work group met to discuss the information requested by the Board. As a result of that meeting, the work group identified the following major content areas that must be included in the training:

- Understanding the intent components, and operational definitions of the Dignity Act.
- Developing sensitivity to the experience of specific student populations.
- Understanding how school climate and culture have an impact on student achievement and behavior.
- Understanding bullying, harassment and discrimination, including indicators, early warning signs, prevention and intervention and how to interact with families of victims and aggressors.
- Understanding diversity and multi-cultural environments and examining your own biases.

The work group also recommended that the providers may be teachers' or professional organizations or associations, school districts, boards of cooperative educational services, nonpublic schools, educational institutions or related agencies with an educational affiliation.

The provider must have adequate resources to offer the coursework or training in Harassment, Bullying and Discrimination Prevention and Intervention, and use a curriculum which, at a minimum, includes the syllabus prepared by the department. The approved provider must ensure that any persons they have hired to teach the work shop will have demonstrated by training, education and experience their competence to teach this training which must include addressing 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 or sex, the identification and mitigation harassment, bullying and discrimination, and strategies for effectively addressing problems of exclusion, bias and aggression in educational settings and instructors should demonstrate knowledge of the Education Law as it relates to the Dignity for All Students Act. The Department may review approved providers during the term of their approval to ensure the competence of their instructors and may request information from a provider at any time regarding their instructors' competence to teach these courses.

The work group has also recommended that at least three of the six hours of training be conducted through face to face instruction.

The proposed amendment has been amended to incorporate their feedback and to address your concerns.

Following the 45-day public comment period after publication in the State Register, the Department received several comments. Attached is an assessment of public comment (see Attachment B).

Recommendation

VOTED: That section 52.21, Subpart 57-4 and Part 80 of the Commissioner's regulations be amended, as submitted, effective July 1, 2013.

Timetable for Implementation

If adopted at the May meeting, the proposed amendment will become effective on July 1, 2013 and candidates seeking certification or a license on or after July 1, 2013 will be required to have such coursework or training.

AMENDMENT TO THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to sections 207, 212, 208, 305, 308, 3001, 3004, 3006 and 3009 of the Education Law.

1. A new paragraph (5) is added to subdivision (a) of section 52.21 of the Regulations of the Commissioner of Education is added, effective July 1, 2013, to read as follows:

(5) All registered teacher education programs leading to certification in the classroom teaching service, school service, or administrative and supervisory service shall provide six clock hours, of which at least three hours must be conducted through face-to-face instruction, of coursework or training in the prevention and intervention of harassment, bullying and discrimination. Such coursework or training shall include, training on the social patterns of harassment, bullying and discrimination, as defined in section 11 of the Education Law, including but not limited to those acts based on a person's actual or perceived race, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender or sex; the identification and mitigation of harassment, bullying and discrimination; and strategies for effectively addressing problems of exclusion, bias and aggression in educational settings.

2. A new item (xiii) shall be added to subclause (1) of clause (c) of subparagraph (ii) of paragraph (2) of subdivision (b) of section 52.21 of the Regulations of the Commissioner of Education, effective July 1, 2013, to read as follows;

(xiii) means for the prevention of and intervention in harassment, bullying and discrimination in accordance with section 14 of the Education Law. Such study shall include six clock hours, of which at least three hours must be conducted through face-

to-face instruction, of course work or training on the social patterns of harassment, bullying and discrimination, as defined in section 11 of the Education Law, including but not limited to those acts based on a person's actual or perceived race, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender or sex; the identification and mitigation of harassment, bullying and discrimination; and strategies for effectively addressing problems of exclusion, bias and aggression in educational settings.

3. A new phrase (X) shall be added to subitem (A) of item (i) of subclause (1) of clause (a) of subparagraph (xiii) of paragraph (3) of subdivision (b) of section 52.21 of the Regulations of the Commissioner of Education, effective July 1, 2013, to read as follows;

(X) means for the prevention of and intervention in harassment, bullying and discrimination in accordance with section 14 of the Education Law. Such study shall include six clock hours, of which at least three hours must be conducted through face-to-face instruction, of course work or training on the social patterns of harassment, bullying and discrimination, as defined in section 11 of the Education Law, including but not limited to those acts based on a person's actual or perceived race, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender or sex; the identification and mitigation of harassment, bullying and discrimination; and strategies for effectively addressing problems of exclusion, bias and aggression in educational settings.

4. A new subitem (J) of item (iv) of subclause (2) of clause (b) of subparagraph (xvii) of paragraph (3) of subdivision (b) of section 52.21 of the Regulations of the Commissioner of Education, effective July 1, 2013, to read as follows;

(J) means for the prevention of and intervention in harassment, bullying and discrimination in accordance with section 14 of the Education Law. Such study shall include six clock hours, of which at least three hours must be conducted through face-to-face instruction, of course work or training on the social patterns of harassment, bullying and discrimination, as defined in section 11 of the Education Law, including but not limited to those acts based on a person's actual or perceived race, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender or sex; the identification and mitigation of harassment, bullying and discrimination; and strategies for effectively addressing problems of exclusion, bias and aggression in educational settings.

5. A new clause (c) shall be added to subparagraph (iv) of paragraph (1) subdivision (c) of section 52.21 of the Regulations of the Commissioner of Education is added, effective July 1, 2013, to read as follows

(c) Programs shall ensure that candidates complete six clock hours, of which at least three hours must be conducted through face-to-face instruction, of coursework or training on the social patterns of harassment, bullying and discrimination, a, in accordance with the requirements of section 14 of the Education Law.

6. Subpart 57-4 of the Regulations of the Commissioner of Education is added, effective July 1, 2013 as follows:

SUBPART 57-4

Training in Harassment, Bullying and Discrimination Prevention and Intervention
§ 57-4.1 Purpose.

The purpose of this Subpart is to set forth standards for approval and the approval process for providers of course work or training in harassment, bullying and

discrimination, prevention and intervention that is offered to candidates for a teachers' certificate or license in the classroom teaching service, school service, or administrative and supervisory service, as required by section 14 of the Education Law.

§ 57-4.2 Definitions.

As used in this Subpart:

(a) Coursework or training means course work or training in harassment, bullying and discrimination prevention and intervention.

(b) Provider means any teachers' or professional organization or association, school district, board of cooperative educational services, nonpublic school, institution of higher education, government agency or office, social service agency, or any other educational organization that has as its purpose the provision of course work or training in Harassment, Bullying and Discrimination Prevention and Intervention pursuant to Education Law Article 2 – Dignity for all Students.

§ 57-4.3 Filing of application for approval as a provider.

(a) A person or organization seeking approval as a provider shall submit to the department, an application on forms prescribed by the commissioner, with a fee of \$600.

(b) To be approved, each applicant shall submit evidence acceptable to the department that the applicant:

- (1) has and will maintain adequate resources to offer the course work or training;
- (2) has and will ensure that faculty who will offer the course work or training have demonstrated, their competence to offer the course work or training.

(3) certifies in writing that the coursework or training will be conducted through use of a curriculum which, at a minimum, includes the syllabus prepared by the department;

(4) certifies, in writing, that certification of completion forms obtained from the department will be issued to students upon completion of the course work or training for their use in documenting satisfaction of the requirement of course work or training in the Prevention and Intervention of Harassment, Bullying and Discrimination; and

(5) certifies, in writing, that it will maintain and produce evidence of completion for all students who complete the course work or training and that it will submit such evidence to the department, in a time and format prescribed by the Commissioner.

§57-4.4 Term of approval as a provider.

(a) Providers shall be approved for a period of three years, except that the approved status of such providers may be terminated during this term by the department in accordance with section 57-4.6 of this Subpart.

(b) At the expiration of said term, the provider may reapply to the department for approval following the requirements of section 57-4.3 of this Subpart, including payment of the required fee.

§ 57-4.5 Responsibility of providers.

(a) A provider, at a minimum, shall offer the syllabus prepared by the department and demonstrate that at least three of the six clock hours shall be conducted through face-to-face instruction. However, nothing in this section shall preclude providers from offering additional coursework or training which exceeds, or expands upon, the six hour syllabus prescribed by the department.

(b) An approved provider of such course work or training shall execute a certification of completion of each person completing course work or training, and within 21 calendar days of the completion of course work or training, the provider shall submit the certification of completion to the person completing the course work or training for that person's use in documenting such completion.

(c) The provider shall retain a copy of the certification of completion in the provider's files for not less than six years from the date of completion of course work or training.

(d) In the event that an approved provider discontinues offering coursework or training, all copies of certifications of completion issued within the six years prior to such discontinuance shall be transferred to the department.

(e) Coursework or training shall be taught by instructors who have demonstrated by training, education and experience their competence to teach the course content prescribed in subdivision (a) of this section.

§ 57-4.6 Review of providers by the department.

(a) The department may review approved providers during the term of approval to ensure compliance with the requirements of this Subpart and may request information from a provider and may conduct site visits, pursuant to such review.

(b) A determination by the department that the services offered by a provider are inadequate, incomplete or otherwise unsatisfactory pursuant to the standards set forth in this Subpart shall result in the denial or termination of the approved status of the provider.

§ 57-4.7 Exemption.

An institution that offers a registered program leading to certification pursuant to section 52.21 of this Title, shall not be required to pay a fee for approval under this section.

7. A new Section 80-1.13 of the Regulations of the Commissioner of Education is added, effective July 1, 2013, as follows:

Section 80-1.13 Required study in Harassment, Bullying and Discrimination Prevention and Intervention

All candidates for a certificate or license valid for an administrative or supervisory service, classroom teaching service or school service who apply for a certificate or license on or after July 1, 2013, shall have completed at least six clock hours, of which at least three hours must be conducted through face-to-face instruction, of course work or training in harassment, bullying and discrimination prevention and intervention, as required by section 14 the Education Law, which is provided by a registered program leading to certification pursuant to section 52.21 of this Title or other approved provider pursuant to Subpart 57-4 of this Title.

8. Subparagraph (i) of paragraph (1) of subdivision (b) of section 80-3.5 of the Regulations of the Commissioner of Education is amended, effective July 1, 2013, as follows:

(i) Education. The candidate shall complete at least two clock hours of course work or training regarding the identification and reporting suspected child abuse or maltreatment, in accordance with requirements of section 3004 of the Education Law. In addition, the candidate who applies for the certificate on or after February 2, 2001, shall complete at least two clock hours of coursework or training in school violence prevention and intervention, as required by section 3004 of the Education Law, which is

provided by a provider approved or deemed approved by the department pursuant to Subpart 57-2 of this Title. A candidate who applies for the certificate on or after July 1, 2013, shall also complete at least six clock hours, of which at least three hours must be conducted through face-to-face instruction, of coursework or training in harassment, bullying and discrimination prevention and intervention, as required by section 14 the Education Law.

9. Subparagraph (i) of paragraph (2) of subdivision (b) of section 80-3.5 of the Regulations of the Commissioner of Education is amended, effective July 1, 2013, as follows:

(i) Education. The candidate shall complete at least two clock hours of course work or training regarding the identification and reporting suspected child abuse or maltreatment, in accordance with requirements of section 3004 of the Education Law. In addition, the candidate who applies for the certificate on or after February 2, 2001, shall complete at least two clock hours of coursework or training in school violence prevention and intervention, as required by section 3004 of the Education Law, which is provided by a provider approved or deemed approved by the department pursuant to Subpart 57-2 of this Title. A candidate who applies for the certificate on or after July 1, 2013, shall also complete at least six clock hours, of which at least three hours must be conducted through face-to-face instruction, of coursework or training in harassment, bullying and discrimination prevention and intervention, as required by section 14 the Education Law.

10. Subparagraph (ii) of paragraph (2) of subdivision (a) of section 80-3.7 of the Regulations of the Commissioner of Education is amended, effective July 1, 2013, as follows:

(ii) The candidate shall complete study in child abuse identification, [and] school violence and harassment, bullying and discrimination prevention and intervention, as prescribed in [section] sections 80-1.4 and 80-1.13 of this Part.

11. Subparagraph (ii) of paragraph (2) of subdivision (b) of section 80-3.7 of the Regulations of the Commissioner of Education is amended, effective July 1, 2013, as follows:

(ii) The candidate shall complete study in child abuse identification, [and] school violence and harassment, bullying and discrimination prevention and intervention, as prescribed in [section] sections 80-1.4 and 80-1.13 of this Part.

12. Subparagraph (ii) of paragraph (3) of subdivision (b) of section 80-3.7 of the Regulations of the Commissioner of Education is amended, effective July 1, 2013, as follows:

(ii) The candidate shall complete study in child abuse identification, [and] school violence and harassment, bullying and discrimination prevention and intervention, as prescribed in [section] sections 80-1.4 and 80-1.13 of this Part.

13. Paragraph (1) of subdivision (b) of section 80-5.14 of the Regulations of the Commissioner of Education is amended, effective July 1, 2013, to read as follows:

(1) Education. A candidate shall hold a graduate academic or graduate professional degree from a regionally accredited institution of higher education or from an institution authorized by the Board of Regents to confer degrees. A candidate shall complete study in the means for identifying and reporting suspected child abuse and maltreatment, which shall include at least two clock hours of coursework or training in the identification and reporting of suspected child abuse or maltreatment in accordance with the requirements of section 3004 of the Education Law. In addition, the candidate

who applies for the certificate on or after February 2, 2001, shall complete at least two clock hours of coursework or training in school violence prevention and intervention, as required by section 3004 of the Education Law, which is provided by a provider approved or deemed approved by the department pursuant to Subpart 57-2 of this Title. A candidate who applies for the certificate on or after July 1, 2013, shall also complete at least six clock hours, of which at least three hours must be conducted through face-to-face instruction, of coursework or training in harassment, bullying and discrimination prevention and intervention, as required by section 14 the Education Law.

14. Subparagraph (ii) of paragraph (1) of subdivision (a) of section 80-5.20 of the Regulations of the Commissioner of Education is amended, effective July 1, 2013, as follows:

(ii) The candidate shall meet the general requirements for certificates prescribed in Subpart 80-1 of this Part, including but not limited to the requirements of section 80-1.3 relating to citizenship, section 80-1.4 relating to study in child abuse identification and reporting, section 80-1.13 relating to study in harassment, bullying and discrimination prevention and intervention and school violence prevention and intervention; and section 80-1.11 relating to a criminal history record check.

15. Subparagraph (ii) of paragraph (1) of subdivision (b) of section 80-5.20 of the Regulations of the Commissioner of Education is amended, effective July 1, 2013, as follows:

(ii) The candidate shall meet the general requirements for certificates prescribed in Subpart 80-1 of this Part, including but not limited to the requirements of section 80-1.3 relating to citizenship, section 80-1.4 relating to study in child abuse identification and reporting, section 80-1.13 relating to study in harassment, bullying and

discrimination prevention and intervention and school violence prevention and intervention; and section 80-1.11 relating to a criminal history record check.

16. Subparagraph (i) of paragraph (2) of subdivision (a) of section 80-5.22 of the Regulations of the Commissioner of Education is amended, effective July 1, 2013, as follows:

(i) Education. A candidate shall hold a graduate degree in science, technology, engineering or mathematics from a regionally or nationally accredited institution of higher education, a higher education institution that the commissioner deems substantially equivalent, or from an institution authorized by the Board of Regents to confer degrees. A candidate shall complete study in the means for identifying and reporting suspected child abuse and maltreatment, which shall include at least two clock hours of coursework or training in the identification and reporting of suspected child abuse or maltreatment in accordance with the requirements of section 3004 of the Education Law. In addition, the candidate shall complete at least two clock hours of coursework or training in school violence prevention and intervention, as required by section 3004 of the Education Law, which is provided by a provider approved or deemed approved by the department pursuant to Subpart 57-2 of this Title. A candidate who applies for the certificate on or after July 1, 2013, shall also complete at least six clock hours, of which at least three hours must be conducted through face-to-face instruction, of coursework or training in harassment, bullying and discrimination prevention and intervention, as required by section 14 the Education Law.

ASSESSMENT OF PUBLIC COMMENT

Since publication of a Notice of Revised Rule Making in the State Register on March 13, 2013, the State Education Department (SED) received the following comments on the revised proposed amendment.

COMMENTS:

A commenter expressed concern regarding the requirement that three of the six training hours be conducted “face to face.” The commenter indicated that having a course that was conducted all online would be helpful for students who have internships or those who are student teaching while taking their course, and therefore not on campus during the semester. Additionally, the commenter noted that many of the students that would take the training course online over the summer may be located in different states, or different countries, where it would not be possible to come back to their campus for the three hours of face to face time, unless this face to face time included a synchronized online component.

Another commenter expressed similar concern, stating: there is no reason to impose a face-to-face requirement that is decidedly more expensive and less efficient—and without evidence of greater effectiveness—than other modalities, including online instruction, video conferencing, and/or other modern possibilities.

The face-to-face requirement that SED proposes to impose (1) has no demonstrable benefit, (2) is more expensive and time consuming than available alternatives, and (3) is not mandated by statute. We respectfully submit that SED should, therefore, remove the face-to-face requirement.

DEPARTMENT RESPONSE:

In direct response to the enactment of Chapter 102 of the Laws of 2012, which amended the Dignity Act to include the requirement that school professionals applying for a certificate or license on or after July 1, 2013 complete six hours of harassment, bullying, and discrimination training, the Department consulted with an extensive work group. This work group was comprised of representatives of teachers, administrators, school social workers, school counselors, school psychologists, superintendents, school boards, teacher education program faculty, and GLESN and Empire Pride Agenda program leaders.

The Department sought recommendations from the work group, including how many hours and what type of training would be most appropriate to ensure that school personnel are provided with adequate training in harassment, bullying, and discrimination. Subsequently, the workgroup recommended that at least three of the six hour training be conducted through face to face instruction. The rationale for this recommendation was based largely on the statutorily required subject matter of the DASA training. Several members of the workgroup, as representatives of the field, voiced concerns that allowing the DASA training to be conducted online would substantially decrease the potential for emotional impact on participants. Additionally, the scope of activities possible for participants to experience would be significantly decreased.

While the Department understands the concerns of the commenter, the Department has determined that three of the six required hours may be conducted online, while the remaining three hours must be conducted face to face. This

determination takes into consideration both the intent and purpose behind the DASA training, while simultaneously recognizing and allowing for a level of flexibility for educators in their teaching. The Department is seeking as many alternative face-to-face providers as possible, to ensure that students who will be required to take the course have access to this training. For example, BOCES and teacher centers can become regional providers.

COMMENT:

Several comments suggested that the Department consider combining the training of the Safe Schools Against Violence in Education (“SAVE”) Act with the Dignity for All Students Act (“Dignity Act”), in order to build a more comprehensive understanding of violence, risk and prevention factors, and the overall referral process for students exhibiting intolerance, bullying, and/or violent behavior. The six hours would include content from both Acts, and as NYSCSS is developing guidance to correlate components of SAVE in relation to the Dignity Act, they seem to have similar components.

DEPARTMENT RESPONSE:

The Dignity for All Students Act (“Dignity Act”) requires training to focus specifically on addressing social patterns of harassment, bullying, and discrimination. As many of the requisite topics under the Safe Schools Against Violence in Education (“SAVE”) Act do not address these items, a single training session would not be sufficient to comply with the provisions of the Dignity Act. However, if a provider made arrangements to extend the six hours required for DASA training to include SAVE training, that would certainly be acceptable.

COMMENT:

Another commenter provided support for the proposed amendment. However, the commenter expressed concern because the syllabus for the training course has not been made publicly available and the approval process for providers of such training has not begun. The comment noted that preparation programs with August graduates are affected as well as currently certified individuals who will be applying for an additional certificate prior to the start of the 2013-14 school year. The comment asked how will these applicants fulfill the requirement and obtain the necessary documentation for certification?

Applicants should not be penalized for conditions that are not within their control. We are confident that you will offer appropriate accommodations in these initial stages.

DEPARTMENT RESPONSE:

The Legislature enacted Chapter 102 of the Laws of 2012 in June 2012, which amended the Dignity Act to include a requirement that school professionals applying for a certificate or license on or after July 1, 2013 complete training on the social patterns of harassment, bullying, and discrimination. The Department convened a workgroup of experts from a broad range of interested parties to discuss the best strategies to employ to assist educators, which included the development of a course syllabus. This developmental process also included outreach and feedback from several preparation programs and took into account many of their suggestions. It is expected that this syllabus will be available in the next couple of weeks and the Department will begin accepting applications for approved providers later this month.

The Department understands the challenges that preparation programs may face as a result of the regulation changes, and is currently discussing ways that the Department can further assist the field. However, at this time, any school professional

that applies for a certificate or license on or after July 1, 2013, must complete the training required by the Dignity Act and no additional time will be given to comply with these requirements.