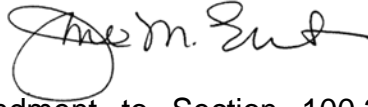






THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK / ALBANY, NY 12234

TO: P-12 Education Committee

FROM: Jhone M. Ebert 

SUBJECT: Proposed Amendment to Section 100.2(kk)(1) of the Commissioner's Regulations Relating to Reports of Incidents of Harassment, Bullying, and/or Discrimination Pursuant to the Dignity for All Students Act

DATE: September 6, 2018

AUTHORIZATION(S):  

SUMMARY

Issue for Decision

Should the Board of Regents adopt the proposed amendment to §100.2(kk)(1) of the Commissioner's Regulations to add a new subparagraph (x) to include illustrative examples of the types of incidents of harassment, bullying, and/or discrimination which must be reported to the principal, superintendent or designee as possible violations of the Dignity for All Students Act (DASA)?

Reason(s) for Consideration

Review of Policy.

Proposed Handling

The proposed amendment is presented to the P-12 Education Committee for action at the September 2018 Board of Regents meeting. A copy of the proposed amendment is included as Attachment A.

Procedural History

A Notice of Emergency Adoption and Proposed Rulemaking was published in the State Register on May 23, 2018, for a 60-day public comment period which expired on July 23, 2018. Attachment B is an Assessment of Public Comment. A second Notice of Emergency Adoption was published in the State Register on August 22, 2018 to ensure that the rule remained continuously in effect until it can be presented for adoption at the September Regents meeting and take effect as a permanent rule on October 3, 2018.

Background Information

In 2010, the Dignity for All Students Act¹ (DASA) added a new Article 2 to the Education Law to require, among other things, school districts to create policies and guidelines to be used in school training programs to discourage harassment, bullying, and/or discrimination and to enable school personnel to prevent and respond to discrimination or harassment. DASA became effective on July 1, 2012, and was later amended to include cyberbullying, effective July 1, 2013. Subsequently, the Department worked with key stakeholders through the DASA Task Force to develop and implement guidance and regulations to assist schools in implementing the provisions of the law. Since the adoption of Commissioner's Regulations to implement DASA, the Department has worked to provide training to the field, updates to the DASA website, and several guidance documents.

DASA continues to be a powerful tool used to address bullying, discrimination, and harassment in our schools and to ensure that all students are educated in a safe and supportive school environment. However, the issues faced by students and schools in this area continue to evolve. The Department is committed to working with stakeholders to ensure that all students have the opportunity to learn and to attend school free from bullying, harassment, and/or discrimination.

To that end, in July 2015, the Department issued guidance, entitled "Creating a Safe and Supportive School Environment for Transgender and Gender Nonconforming Students", to assist school districts in fostering an educational environment for all students that is safe and free from harassment, bullying, and discrimination — regardless of sex, gender identity, or gender expression — and to facilitate compliance with local, state, and federal laws concerning bullying, harassment, discrimination, and student privacy (See [NYSED Transgender GNC Guidance](#)). At the time the guidance document was issued, the Department received national recognition for the proactive nature of the guidance to protect transgender and gender non-conforming students. In May 2016, this work was highlighted by the United States Department of Education as a sample policy designed to address bullying, discrimination, and/or harassment of transgender and gender non-conforming students.²

¹ Chapter 482 of the Laws of 2010

² http://www.p12.nysed.gov/dignityact/documents/USDEandUSDOJ_TransgenderStudents_May2016.pdf

In August 2016, Commissioner Elia, in partnership with the Attorney General's Office, issued a memorandum,³ guidance,⁴ and model materials⁵ to assist school districts in complying with DASA. That guidance provided school districts with model forms to assist with investigating and verifying reports of bullying, harassment, and/or discrimination.

In October 2017, the Office of the State Comptroller (OSC) issued an audit report entitled "Implementation of the Dignity for All Students Act".⁶ While OSC noted the efforts made by the Department to provide professional development and technical assistance and the efforts of school districts throughout the State to comply with DASA, OSC's findings also revealed a need to provide additional guidance and training to the field, particularly in the area of identifying, documenting, investigating, and reporting DASA incidents.⁷

In February 2017, the Commissioner again issued a joint memorandum with the Attorney General to remind school districts of the obligation to protect transgender students from bullying, discrimination, and harassment in their schools and at all school functions, despite actions taken by the United States Department of Education (USDOE) and the United States Department of Justice (USDOJ) to rescind previously issued guidance surrounding the protection of transgender and gender non-conforming students.⁸ In response to USDOE's confirmation in February 2018 that it would no longer investigate civil rights complaints from transgender students denied access to bathrooms consistent with their gender identity, the Commissioner and the Attorney General issued another joint memorandum to school districts in which they reiterated New York's commitment to creating safe and supportive learning environments for all New York students and school district's obligation to comply with DASA.

The research shows that bullying and school climate are linked to children's academic achievement, learning, and development.⁹ Specifically, children who are bullied are more likely to avoid school, more likely to drop out of school, have lower academic achievement, have lower self-esteem and higher levels of anxiety, depression and loneliness, and are more likely to attempt suicide, both during childhood and later in life.¹⁰

³ <https://ag.ny.gov/press-release/ag-schneiderman-and-state-education-commissioner-elia-release-guidance-and-model>

⁴ <http://www.p12.nysed.gov/dignityact/documents/SED-AGLtrandGuidance8-31-16.pdf>

⁵ <http://www.p12.nysed.gov/dignityact/documents/TrainingMaterialsFn18-31-16.pdf>

⁶ <https://osc.state.ny.us/audits/allaudits/093018/16s28.pdf>

⁷ As part of the audit, OSC observed "school personnel's lack of knowledge, experience, and training in identifying, documenting, investigating, and reporting DASA incidents. During our visits, officials at 17 of the 20 schools indicated that they struggle with interpreting or implementing DASA guidance and reporting requirements. Four years after DASA took effect, some schools continue to have difficulty identifying a material incident and would like better descriptions of the categories and/or more examples of incidents to help them make proper incident classifications. Some school personnel also said they struggle with differing conceptions of what constitutes "bullying," and they are unclear about their responsibilities to respond to and report cyberbullying incidents."

⁸ http://www.p12.nysed.gov/dignityact/documents/USDEandUSDOJ_TransgenderStudents_May2016.pdf

⁹ <http://www.apa.org/advocacy/interpersonal-violence/bullying-school-climate.aspx>

¹⁰ <http://www.apa.org/advocacy/interpersonal-violence/bullying-school-climate.aspx>

A recent national survey of school climate found that more than 80 percent of lesbian, gay, bisexual, and transgender (LGBT) youth reported some form of bullying or harassment at school.¹¹ These concerns are especially urgent for transgender students for whom the data indicates that 1 in 2 transgender students have had at least one suicide attempt by their twentieth birthday.¹²

As a result of these developments, Department staff proposes to amend Commissioner's Regulation §100.2(kk)(1) to include illustrative examples of the types of incidents of harassment, bullying and/or discrimination which must be reported to the principal, superintendent, or designee when reported to or witnessed by a school employee. Specifically, the proposed amendment includes a definition of "report of harassment, bullying, and/or discrimination" to include, but not be limited to, the following examples:

- a report regarding the denial of access to school facilities including, but not limited to, restrooms, changing rooms, locker rooms, and/or field trips, based on a person's actual or perceived race, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender (which includes gender identity and/or expression), or sex; or
- a report regarding application of a dress code, specific grooming or appearance standards that is based on a person's actual or perceived race, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender (which includes gender identity and/or expression), or sex; or
- a report regarding the use of name(s) and pronoun(s) or the pronunciation of name(s) that is based on a person's actual or perceived race, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender (which includes gender identity and/or expression), or sex; or
- a report regarding any other form of 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 (which includes gender identity and/or expression), or sex.

The Department remains committed to working with all partners throughout the State to ensure that all students have an opportunity to thrive in a school environment that is safe, supportive and free from bullying, harassment, and/or discrimination. We will continue to support district administrators and school staff as they continue to take proactive steps to create a positive school culture and climate in which students feel safe and supported, and fully included. The proposed amendment to Commissioner's Regulations §100.2(kk)(1) is intended to support these efforts by clarifying and assisting in DASA implementation statewide.

¹¹<http://www.apa.org/advocacy/interpersonal-violence/bullying-school-climate.aspx>

¹²<https://www.cdc.gov/violenceprevention/suicide/statistics/>

Related Regents Items

- [July 2018](http://www.regents.nysed.gov/common/regents/files/718brca11.pdf) <http://www.regents.nysed.gov/common/regents/files/718brca11.pdf>
- [May 2018](http://www.regents.nysed.gov/common/regents/files/518p12a4.pdf) <http://www.regents.nysed.gov/common/regents/files/518p12a4.pdf>
- [September 2016](http://www.regents.nysed.gov/common/regents/files/916p12d2.pdf): Proposed Amendment of §100.2(gg) of the Commissioner's Regulations relating to the Uniform Violent and Disruptive Incident Reporting System (VADIR)
(<http://www.regents.nysed.gov/common/regents/files/916p12d2.pdf>)
- [May 2016](http://www.regents.nysed.gov/common/regents/files/516p12d1.pdf): Violent and Disruptive Incident Reporting and Calculating the School Violent Index
(<http://www.regents.nysed.gov/common/regents/files/516p12d1.pdf>)
- [October 2015](https://www.regents.nysed.gov/common/regents/files/meetings/Oct%202015/1015p12d1.pdf): The NYS Safe Schools Task Force: Current Status Update
(<https://www.regents.nysed.gov/common/regents/files/meetings/Oct%202015/1015p12d1.pdf>)
- [July 2015](http://www.regents.nysed.gov/common/regents/files/meetings/Jul%202015/715p12d1.pdf): New York State Transgender and Gender Nonconforming Students Final Guidance Document
(<http://www.regents.nysed.gov/common/regents/files/meetings/Jul%202015/715p12d1.pdf>)
[New York State Transgender and Gender Nonconforming Final Guidance Document Presentation](http://www.regents.nysed.gov/common/regents/files/meetings/TransgenderGuidance_0.pdf)
(http://www.regents.nysed.gov/common/regents/files/meetings/TransgenderGuidance_0.pdf)
- [April 2015](http://www.regents.nysed.gov/common/regents/files/meetings/Apr%202015/415p12d3.pdf): Transgender and Gender Nonconforming Students Guidance
(<http://www.regents.nysed.gov/common/regents/files/meetings/Apr%202015/415p12d3.pdf>)
[Transgender and Gender Nonconforming Students Guidance Presentation](http://www.regents.nysed.gov/common/regents/files/meetings/TransgenderGuidance.pdf)
(<http://www.regents.nysed.gov/common/regents/files/meetings/TransgenderGuidance.pdf>)
- [June 2014](http://www.regents.nysed.gov/common/regents/files/614p12d1.pdf): Safe Schools Task Force Update
(<http://www.regents.nysed.gov/common/regents/files/614p12d1.pdf>)
- [October 2013](https://www.regents.nysed.gov/common/regents/files/1013p12d1%5B1%5D.pdf): Safe Schools Task Force
<https://www.regents.nysed.gov/common/regents/files/1013p12d1%5B1%5D.pdf>

Recommendation

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

VOTED: That a new subparagraph (x) be added to paragraph (1) of subdivision (kk) of §100.2 of the Regulations of the Commissioner of Education, as submitted, effective October 3, 2018.

Timetable for Implementation

If adopted at the September 2018 Regents meeting, the proposed amendment will become effective as a permanent rule on October 3, 2018.

Attachment A

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).

Paragraph (1) of subdivision (kk) of section 100.2 of the Regulations of the Commissioner of Education is amended by adding a new subparagraph (x) as follows:

(x) For purposes of this section, a “report of harassment, bullying, and/or discrimination” means a written or oral report of harassment, bullying, and/or discrimination that could constitute a violation of the Dignity for All Students Act (article 2 of the Education Law). Such a report may include, but is not limited to, the following examples:

(a) a report regarding the denial of access to school facilities, functions, opportunities or programs including, but not limited to, restrooms, changing rooms, locker rooms, and/or field trips, based on a person's actual or perceived race, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender (which includes gender identity and/or expression), or sex; or

(b) a report regarding application of a dress code, specific grooming or appearance standards that is based on a person's actual or perceived race, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender (which includes gender identity and/or expression), or sex; or

(c) a report regarding the use of name(s) and pronoun(s) or the pronunciation of name(s) that is based on a person's actual or perceived race, color, weight, national

origin, ethnic group, religion, religious practice, disability, sexual orientation, gender (which includes gender identity and/or expression), or sex; or

(d) a report regarding any other form of 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 (which includes gender identity and/or expression), or sex.

ASSESSMENT OF PUBLIC COMMENT
8 NYCRR 100.2(kk)

Following publication of the Notice of Proposed Rule Making in the State Register on May 23, 2018, the Department received the following comments on the proposed amendment:

1.COMMENT:

Several commenters expressed support for the proposed amendment, especially the repetition of the existing definition of gender (§100.2[kk][1][vi]) within the terms of the regulation to further clarify that “gender” includes “gender identity and/or expression.”

DEPARTMENT RESPONSE:

No response necessary as the comment is supportive.

2. COMMENT:

Several commenters expressed support, but seek additional amendments to include the following bolded language to the final regulation:

“a report regarding the denial of access to school facilities, functions, opportunities, or programs, including but not limited to, restrooms, changing rooms, locker rooms, and/or field trips, **consistent with a person’s gender identity or expression, or a denial that is otherwise** based on a person’s actual or perceived race, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender (which includes gender identity and/or expression), or sex; or”

Commenters state that such language clarifies that a report may be triggered when issues arise beyond a student’s access to appropriate restrooms, changing rooms, locker rooms, and other sex-segregated facilities. While these matters are

essential for transgender and gender-nonconforming students, equal access to after school programs, student clubs, field trips, and other educational opportunities are equally important to ensuring that they are protected from harassment, bullying and discrimination in the totality of the school experience.

DEPARTMENT RESPONSE:

The proposed amendments are only intended to provide illustrative and non-exclusive examples of the types of incidents of harassment, bullying and/or discrimination which must be reported to the principal, superintendent or designee when reported to or witnessed by a school employee. Presently, consistent with DASA, §100.2(jj) requires schools to promote a positive school environment that is free from harassment, bullying and/or discrimination. Therefore, the Department does not believe that amendments are necessary to include additional examples of incidents which must be reported and investigated under DASA.

Furthermore, the proposed amendments explicitly state that harassment, bullying and/or discrimination based on gender includes such acts based on gender identity and/or expression. Therefore, no amendments are necessary.

3.COMMENT:

Several commenters expressed support for the proposed amendment, but seek additional amendments to include the following bolded language to the final regulation: “a report regarding the use of name(s) or pronoun(s) or the pronunciation of name(s) that is **inconsistent with a person’s gender identity or expression or is otherwise** based on a person's actual or perceived race, color, weight, national origin, ethnic

group, religion, religious practice, disability, sexual orientation, gender (which includes gender identity and/or expression), or sex;”

Commenters state that the purpose of this provision is to specifically identify a basis of a report under DASA resulting from the use of a name and/or pronoun which is not congruent with a student’s gender identity or expression. Commenters are concerned that without the inclusion of the bolded language this provision will not provide sufficient clarity to adequately define the protections of transgender and gender-nonconforming students.

DEPARTMENT RESPONSE:

The proposed amendments explicitly state that harassment, bullying and/or discrimination based on gender includes such acts based on gender identity and/or expression. Therefore, no amendments are needed.

4.COMMENT:

Several commenters sought the addition of the following language regarding the privacy of transgender and gender-nonconforming students:

“(e) a report regarding the disclosure of a student’s transgender status or sexual orientation, or related private medical information (i.e. the “outing” of a student’s gender identity or sexual orientation), without that student’s express consent, or a disclosure that otherwise targets a person's actual or perceived race, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender (which includes gender identity and/or expression), or sex;”

DEPARTMENT RESPONSE:

The intent of the proposed amendments is to provide non-exclusive illustrative examples of reportable incidents to encourage students, teachers, and staff to report incidents which may be DASA violations to ensure that schools are safe and supportive learning environments for all students.

Schools must provide for the privacy of student records in accordance with applicable state and federal laws. The Department's existing guidance addresses the privacy and confidentiality of student records in this regard

(http://www.p12.nysed.gov/dignityact/documents/Transg_GNCGuidanceFINAL.pdf), and

the Department will consider these recommendations in the development of any future or updated guidance. With respect to the proposed amendment, the comment is outside the scope and no amendments are necessary.

5.COMMENT:

Commenter, a parent of a transgender student expressed strong support for the amendment, noting the positive experience his child had working with a respectful and understanding school administration. Strong compassionate leadership from the top down, supported by sensible regulations like this one being proposed, ensure success.

DEPARTMENT RESPONSE:

No response necessary as the comment is supportive.

6.COMMENT:

Please ensure strong, permanent protections for transgender and gender non-conforming students.

DEPARTMENT RESPONSE:

No response necessary as the comment is supportive.

7.COMMENT:

Commenter supports the amendment but is concerned that there are incidents that are not being reported by the target. Commenter suggests a system to automatically capture incidents to facilitate more accurate reporting, both from students and by the district to NYSED.

DEPARTMENT RESPONSE:

The Department agrees that it is important to empower students to report incidents. The intent of the proposed amendments is to provide non-exclusive examples of reportable incidents to encourage students, teachers, and staff to report incidents which may be DASA violations ensuring that schools are safe and supportive learning environments for all students. Therefore, no amendments are necessary.

8.COMMENT:

A few commenters expressed concern that some bullying incidents don't fit into the identified categories and suggest expanding the DASA protected categories to include, family composition, linguistic differences, immigration status, housing status, and other types of bias.

DEPARTMENT RESPONSE:

The proposed amendments are consistent with the requirements of DASA and are intended to be illustrative and not exhaustive examples of behavior that could result in a DASA violation. Additionally, consistent with DASA and §100.2(kk), the proposed amendment expressly provides that incidents of harassment, bullying and/or discrimination may include, but are not limited to incidents based on a person's actual or

perceived race, color, weight, national origin, ethnic group, religion religious practice, disability, sexual orientation, gender or sex. Therefore, no amendments are necessary.

9.COMMENT:

Commenter strongly supports the regulation and affirms that students need safe learning environments to encourage them to succeed.

DEPARTMENT RESPONSE:

No response necessary as the comment is supportive.

10.COMMENT:

A parent and educator recommended mandatory annual meeting for parents and for students to explain bullying and the long-term impact it can have on students, both the bully and the target. Commenter further highlighted the importance of meaningful consequences for students who violate the code of conduct, and the importance of various approaches to end bullying.

DEPARTMENT RESPONSE:

Issues related to training, codes of conduct and policies to address bullying are addressed by various other provisions of DASA, Commissioner's regulations and guidance (e.g.,§100.2[jj] ; §100.2[c];§100.2[l]; §119.6;§100.2[kk]; §100.2[jj]; <http://www.p12.nysed.gov/dignityact/>). The comment is therefore outside the scope of the proposed amendment. However, the Department agrees that parent and student engagement is essential and has developed guidance and resources for schools and communities: <http://www.p12.nysed.gov/dignityact/>. The Department will consider these recommendations in the development of any future or updated guidance.

11.COMMENT:

Commenter supports the amendment, but expressed concern relating to the use of names and pronouns indicating that in the case of a transgender, or gender non-conforming student, a teacher may not wish to affirm the student's gender identity because of a belief that such affirmation may bring long-term harm to the student. Commenter suggests a compromise whereby teachers address all students by their last name. Commenter was further concerned that such amendments establish a religious position within public schools as the way one defines human identity is fundamentally a religious concept and that public schools should expose students to varied beliefs on human identity to maintain neutrality.

DEPARTMENT RESPONSE:

Education Law §12 provides that “No student shall be subjected to harassment or bullying by employees or students on school property or at a school function; nor shall any student be subjected 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 by school employees or students on school property or at a school function.” The proposed amendments are consistent with the statutory prohibition of harassment, bullying and/or discrimination on school property, and merely provide additional examples of behavior which could constitute a DASA violation. The Department's existing guidance addresses the use of nouns and pronouns and the Department may consider the recommendations in the development of any future or updated guidance

http://www.p12.nysed.gov/dignityact/documents/Transg_GNCGuidanceFINAL.pdf.

Therefore, no amendments are necessary.

12.COMMENT:

Commenter expressed concern that the amendments do not consider that young children may say things without intent to discriminate or hurt and that such incidents are better left to teachers to increase student's understanding of how words can hurt others. Commenter does not believe that school districts should be required to file and investigate DASA reports in such circumstances.

DEPARTMENT RESPONSE:

The Department agrees that educators are in the best position to teach and model empathy in the classroom and to deepen students understandings of how their words and actions can hurt others. However, the Department believes that the statute and regulations presently require school districts to properly investigate and verify any report of behavior that could constitute harassment, bullying, and/or discrimination. In the case of a young student, the investigation may in fact reveal the incident does not fall within the definition of harassment, bullying, and/or discrimination. In addition to the obligation to investigate reports of DASA violations, school districts should continue working to create an environment free from bullying, harassment and/or discrimination. Finally, Ed. Law §12(2) and Commissioner's regulation §100.2(jj) require schools to adopt age appropriate policies designed to prohibit harassment, bullying and/or discrimination. Therefore, no amendments are necessary.

13.COMMENT:

Commenter is concerned that the proposed amendments signal that the examples provided constitute per se violations of DASA, and by simply demonstrating that such words or actions took place, a DASA violation will be presumed. Existing guidance documents provide sufficient direction to schools and therefore, the amendments are not necessary.

DEPARTMENT RESPONSE:

The Department does not share the concern. Presently, any incident that is reported must be investigated and verified. Furthermore, the amended language is not intended to be an exhaustive list of incidents that must be reported and investigated as possible DASA violations, nor does it establish a presumption of a DASA violation. Schools continue to have the obligation to investigate and verify that the incident meets the statutory and regulatory definitions of bullying, harassment and/or discrimination and that such incident actually occurred. Neither the existing regulation, nor the amendments require that any reported incident automatically constitutes a DASA violation. Therefore, no amendments are necessary.

14.COMMENT:

Commenter expressed concern that the amendments could have the unintended consequence of putting school districts in the position of having to disregard the wishes of parents if such parents do not wish to affirm a student's gender identity, and further subject the school to a DASA complaint from the student.

DEPARTMENT RESPONSE:

The Department understands the important balance schools must maintain in respecting the wishes of those in parental control of students while cultivating a school

environment free from harassment, bullying and/or discrimination. Although such balance may be challenging, it does not relieve school districts of their statutory obligation to investigate reports of bullying, discrimination and/or harassment. The Department agrees that parent and student engagement is essential (see <http://www.p12.nysed.gov/dignityact/>) and has also issued guidance addressing such issues as privacy and balancing the goal of supporting the student with the requirement that parents be kept informed about their children (http://www.p12.nysed.gov/dignityact/documents/Transg_GNCGuidanceFINAL.pdf).

Therefore, no amendments are necessary.

15.COMMENT:

Commenter opposed the amendment indicating that it had the effect of the government determining gender.

DEPARTMENT RESPONSE:

The proposed amendments are consistent with the statutory requirement to prohibit harassment, bullying and/or discrimination on school property on the basis of several categories, including gender (which includes gender identity and/or expression) and sex. The proposed amendments merely provide additional examples of behavior which could constitute a DASA violation. As such, the comment is outside the scope of the amendment and no changes are necessary.

16.COMMENT:

Commenter expressed concern that teachers also bully/harass students.

DEPARTMENT RESPONSE:

DASA currently prohibits harassment, bullying and/or discrimination of students by students and employees. Therefore, the current regulations address this commenter's concerns and the comment is outside the scope of the amendment. No changes are necessary.