




TO: P-12 Education Committee
FROM: Ken Slentz 
SUBJECT: Addition of section 100.2(jj) of the Commissioner's Regulations, Relating to School Employee Training and the Dignity Act
DATE: April 6, 2012
AUTHORIZATION(S):

SUMMARY

Issue for Discussion

Should the Board of Regents adopt the proposed addition of a new section 100.2(jj), relating to school employee training to implement the Dignity for All Students Act ("Dignity Act")?

Reason(s) for Consideration

Required by Statute (L. 2010, Ch. 482).

Proposed Handling

The proposed rule is being presented to the P-12 Education Committee for discussion at the April Regents meeting.

Procedural History

The proposed rule was discussed by the P-12 Education Committee at the February Regents meeting. A Notice of Proposed Rule Making was published in the State Register on February 15, 2012. The proposed rule has been revised in response to public comment. A copy of the revised proposed rule and an Assessment of Public Comment are attached. Supporting materials are available upon request from the Secretary to the Board of Regents.

Background Information

Chapter 482 of the Laws of 2010 added a new Article 2 to the Education Law (Ed.L. §§10 through 18), relating to the Dignity Act. The statute's provisions take effect on July 1, 2012.

The proposed rule establishes standards for a program to train school employees and administrators to promote a positive school environment that is free from discrimination and harassment; and to discourage and respond to incidents of discrimination and/or harassment on school property or at a school function. Specifically, the proposed rule requires each school district, BOCES and charter school to create guidelines to provide:

- On or before July 1, 2012, for schools to implement school employee training programs, commencing with the 2012 -13 school year and thereafter, to promote a positive school environment that is free from discrimination and harassment and to discourage and respond to incidents of discrimination and/or harassment on school property or at a school function. Employee training guidelines shall be approved by the board of education of the school district (or by the chancellor of the city school district in the case of the City School District of the City of New York) and by the board of trustees of the charter school;
- Training for employees, including school and district administrators:
 - (i) to raise awareness and understanding of the school district's Code of Conduct pursuant to section 100.2(l) of this Title or, in the case of a charter school, the school's disciplinary rules and procedures pursuant to Education Law section 2851(2)(h) or, if applicable, the charter school's code of conduct;
 - (ii) to raise awareness and sensitivity to potential acts of discrimination or harassment directed at students that are committed by students or school employees on school property or at school functions; including, but not limited to, discrimination or harassment based on a person's actual or perceived race, color, weight, national origin, ethnic group, religion, religious practices, disability, sexual orientation, gender or sex; and
 - (iii) to enable employees to prevent and respond to incidents of discrimination and harassment.

Training is to be conducted as needed, and may be implemented and conducted in conjunction with existing professional development training pursuant to 100.2(dd)(2)(ii) of this Title and/or with any other training for school employees.

- Development of nondiscriminatory instructional and counseling methods;
- At least one employee in every school shall be designated as a Dignity Act Coordinator and instructed in the provisions of the proposed rule and thoroughly trained in methods to respond to human relations in the areas of race, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender and sex.

(i) The designation of each Dignity Act Coordinator shall be approved by the board of education, trustees or sole trustee of the school district (or in the case of the City School District of the City of New York, by the principal of the school in which the designated employee is employed) and, in the case of a charter school, by the board of trustees.

(ii) The name(s) and contact information for the Dignity Act Coordinator(s) shall be shared with all school personnel, students, and persons in parental relation.

(iii) In the event a Dignity Act Coordinator vacates his or her position, another school employee shall be immediately designated for an interim appointment as Coordinator, pending approval of a successor Coordinator by the applicable governing body within 30 days of the date the position was vacated. In the event a Dignity Act Coordinator is unable to perform the duties of his or her position for an extended period of time, another school employee shall be immediately designated for an interim appointment as the Dignity Act Coordinator, pending return of the previous Dignity Act Coordinator to his or her duties as Dignity Act Coordinator.

In response to public comment, the proposed rule has been substantially revised as follows:

- Section 100.2(jj)(1)(iv) is revised to delete the term "intentional" in the definition of "Discrimination and harassment" because this term does not appear in the Dignity Act.
- Section 100.2(jj)(3) is revised to clarify that training may also include instructional and non-instructional staff, and to provide that guidelines for training programs include guidelines relating to the development of nondiscriminatory instructional and counseling methods.
- Section 100.2(jj)(4)(ii) is revised to ensure that the names and contact information of Dignity Act Coordinators is made known to school personnel, students, and persons in parental relation by requiring such information be included in the codes of conduct and updates posted on school web sites; included in the plain language summaries of the codes

of conduct; included in at least one district or school mailing per school year to parents and persons of parental relation or, if such information changes, in at least one subsequent district or school mailing as soon as practicable thereafter; posted in highly-visible areas of school buildings; and made available at the district and school-level administrative offices.

Recommendation

It is recommended that the Regents P-12 Education Committee reach consensus on the intent of the revised proposed rule prior to taking action at the June 2012 Regents meeting.

Timetable for Implementation

The statute provides that any rules or regulations necessary for the timely implementation of the Dignity Act shall be promulgated on or before July 1, 2012. It is anticipated that the revised proposed rule will be presented for action at the June Regents meeting, after publication of the revised rule in the State Register and expiration of the 30-day public comment period for revised rule makings, as required by the State Administrative Procedure Act. If adopted at the June Regents meeting, the earliest the permanent rule can take effect is July 3, 2012. Therefore, in addition to the permanent adoption in June, an emergency action will be necessary at that time to ensure that the proposed rule takes effect on July 1, 2012, the effective date of the statute.

Attachment

AMENDMENT OF THE REGULATIONS OF THE COMMISSIONER OF
EDUCATION

Pursuant to Education Law sections 11, 12, 13, 14, 101, 207, 305 and 2854(1)(b) and Chapter 482 of the Laws of 2010.

Subdivision (jj) of section 100.2 of the Regulations of the Commissioner of Education is added, effective July 1, 2012, as follows:

(jj) Dignity For All Students School Employee Training Program.

(1) Definitions. As used in this subdivision:

(i) School employee means an employee as defined in subdivision 3 of section 1125 of the Education Law, or an employee of a charter school.

(ii) 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 section 142 of the Vehicle and Traffic Law.

(iii) School function means a school-sponsored extracurricular event or activity.

(iv) Discrimination and harassment means an act 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 threats, intimidation or abuse, of such a severe 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.

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.

(v) Disability means a disability as defined in subdivision 21 of section 292 of the Executive Law.

(vi) Sexual orientation means actual or perceived heterosexuality, homosexuality or bisexuality.

(vii) Gender means actual or perceived sex and shall include a person's gender identity or expression.

(2) On or before July 1, 2012, each school district and each charter school shall establish guidelines for its school or schools to implement, commencing with the 2012-2013 school year and continuing in each school year thereafter, Dignity for All Students school employee training programs to promote a positive school environment that is free from discrimination and harassment; and to discourage and respond to incidents of discrimination and/or harassment on school property or at a school function. Such guidelines shall be approved by

the board of education, trustees or sole trustee of the school district (or by the chancellor of the city school district, in the case of the City School District of the City of New York) or by the board of trustees of the charter school.

(3) The guidelines shall include, but not be limited to, providing employees, including school and district administrators and instructional and non-instructional staff, with:

(i) training to:

(a) raise awareness and sensitivity to potential acts of discrimination or harassment directed at students that are committed by students or school employees on school property or at school functions; including, but not limited to, discrimination or harassment based on a person's actual or perceived race, color, weight, national origin, ethnic group, religion, religious practices, disability, sexual orientation, gender or sex; and

(b) training to enable employees to prevent and respond to incidents of discrimination and harassment;

(c) such training may be implemented and conducted in conjunction with existing professional development training pursuant to subparagraph 100.2(dd)(2)(ii) of this Title and/or with any other training for school employees; and

(ii) guidelines relating to the development of nondiscriminatory instructional and counseling methods.

(4) At least one employee in every school shall be designated as a Dignity Act Coordinator and instructed in the provisions of this subdivision and thoroughly trained in methods to respond to human relations in the areas of race,

color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender and sex.

(i) The designation of each Dignity Act Coordinator shall be approved by the board of education, trustees or sole trustee of the school district (or in the case of the City School District of the City of New York, by the principal of the school in which the designated employee is employed) or, in the case of a charter school, by the board of trustees.

(ii) The name(s) and contact information for the Dignity Act Coordinator(s) shall be shared with all school personnel, students, and persons in parental relation, which shall include, but is not limited to, providing the name, designated school and contact information of each Dignity Act Coordinator by:

(a) listing such information in the code of conduct and updates posted on the Internet web site, if available, of the school or school district, or of the board of cooperative educational services, pursuant to subclause 100.2(l)(2)(iii)(b)(1) of this Part;

(b) including such information in the plain language summary of the code of conduct provided to all persons in parental relation to students before the beginning of each school year, pursuant to subclause 100.2(l)(2)(iii)(b)(3);

(c) include such information in at least one district or school mailing per school year to parents and persons of parental relation and, if such information changes, in at least one subsequent district or school mailing as soon as practicable thereafter;

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

(e) making such information available at the district and school-level administrative offices.

(iii) In the event a Dignity Act Coordinator vacates his or her position, another school employee shall be immediately designated for an interim appointment as Coordinator, pending approval of a successor Coordinator by the applicable governing body as set forth in subparagraph (i) of this paragraph within 30 days of the date the position was vacated. In the event a Coordinator is unable to perform the duties of his or her position for an extended period of time, another school employee shall be immediately designated for an interim appointment as Coordinator, pending return of the previous Coordinator to his or her duties as Coordinator.

PROPOSED ADDITION OF SECTION 100.2(jj) OF THE REGULATIONS OF THE COMMISSIONER OF EDUCATION PURSUANT TO EDUCATION LAW SECTIONS 11, 12, 13, 14, 101, 207, 305 and 2854(1)(b), AND CHAPTER 482 OF THE LAWS OF 2010, RELATING TO THE DIGNITY FOR ALL STUDENTS ACT EMPLOYEE TRAINING PROGRAM

ASSESSMENT OF PUBLIC COMMENT

Since publication of a Notice of Proposed Rule Making in the State Register on February 15, 2012, the State Education Department received the following comments.

1. COMMENT:

In order to offer proper support to school districts, the State must fund at least one full time person to oversee the Dignity Act training and implementation and insure it is carried out with fidelity.

DEPARTMENT RESPONSE:

The comment is beyond the scope of the proposed regulation since additional Legislation would be needed to authorize and provide such funding. The Department is considering developing a "static," non-interactive webinar as an economic and efficient means to provide basic Dignity Act Coordinator (DAC) training to the field.

2. COMMENT:

Recommend that section 100.2(jj)(1)(iv) be revised to delete the term "intentional" in the definition of "Discrimination and harassment" because this term does not appear in the statute.

DEPARTMENT RESPONSE:

The Department has revised the definition to delete such term since it does not appear in the statute.

3. COMMENT:

Recommend that section 100.2(jj)(3)(i), relating to training to raise awareness and sensitivity to potential acts of discrimination or harassment, be revised to address cyberbullying/texting as forms of discrimination and harassment that may initiate off school property but impact school functions.

DEPARTMENT RESPONSE:

The language in section 100.2(jj)(3)(i) is taken directly from the Dignity Act, which does not directly address cyberbullying/texting as forms of discrimination and harassment. In the absence of specific statutory provisions, the Department believes that issues concerning cyberbullying/texting are best addressed in guidance rather than in regulation, since guidance can be provided in a more timely and responsive way than regulations, especially since this is an area of law that continues to rapidly evolve.

4. COMMENT:

Recommend that section 100.2(jj)(4), which requires at least one employee in every school be designated as a Dignity Act Coordinator, be revised to clarify the term "school." If the intent is for a Coordinator to be in each school building, then it is recommended that "school building" replace "school."

DEPARTMENT RESPONSE:

Use of the term "school" is consistent with Education Law section 13, which requires one staff member at every school, and not school building, to be designated as a DAC. In some school districts, there can be multiple "schools"

housed in a single school building. Therefore, pursuant to the statute, each of these schools would be required to have a designated DAC.

5. COMMENT:

Recommend that section 100.2(jj)(4)(iii), relating to the filling of vacancies in the position of Dignity Act Coordinator, be deleted since school districts and boards of cooperative educational services already have processes to fill vacancies.

DEPARTMENT RESPONSE:

The Department disagrees and believes that this provision is necessary to make it clear to school districts, BOCES and charter schools that they must have someone acting as DAC at all times. In addition, the Department believes that the board of education, BOCES or governing body of the charter school must be involved in the filling of a vacancy in the position of DAC, in order to elevate the standing of the position and to make it clear that this is an important and necessary position.

6. COMMENT:

Revise the proposed rule to clarify that training may also include non-instructional staff.

DEPARTMENT RESPONSE:

The Department agrees and has amended section 100.2(jj)(3) to read: "The guidelines shall include, but not be limited to, providing employees, including school and district administrators and instructional and non-instructional staff, with: (i) training to raise awareness and sensitivity to potential acts of discrimination or harassment . . ."

7. COMMENT:

All school personnel benefit from understanding how to respond to bullying, intimidation, and biased-based harassment. Furthermore, training is most effective when staff have access to it within the first two months of the school year, so that they can use what they have learned as soon as possible. Therefore, it is recommended that the proposed rule be revised to include a requirement that the Dignity Act Coordinator (DAC) do "turnkey" training with all school staff to share what they have learned, that all such training occur before October 31st of each year, and that all staff be given the option to attend. The proposed rule should be revised to provide that the Department either offer such training for DACs or authorize designated service providers to perform this training, and to clarify how this training will take place.

DEPARTMENT RESPONSE:

The Department acknowledges that a turnkey approach might lessen the burden imposed on schools by the statute's unfunded mandate. However, providing turnkey training to trainers in large cities, BOCES, and/or Joint Management Team areas would impose substantial costs. Therefore, the Department is considering developing a "static," non-interactive webinar to provide basic DAC training to the field. This is the most economical route and will ensure a consistent message is shared across schools.

8. COMMENT:

The proposed rule should be revised to clarify the role and responsibilities of the Dignity Act Coordinator (DAC), so that schools may choose an appropriate candidate and help candidates understand the time commitment associated with

the role. The DAC should be responsible for coordination of employee training, implementation of district policy, ensuring inclusive curriculum, and final responsibility for investigations and student discipline. The DAC must have administrative credentials to manage student discipline such as a vice principal or other senior administrator, have interaction with students, authority to implement policy changes based on the Dignity Act, and the ability to further implementation without compromising other professional responsibilities.

DEPARTMENT RESPONSE:

The Department believes that since the role of the DAC will vary from school-to-school and from district-to-district, depending on the varying needs and circumstances particular to each school and district across the State, from large city school districts to small rural districts, the determination of the specific role and duties of the DAC is best left as a local decision to be made by each school district, BOCES and charter school to best address their individual needs and circumstances. In addition, the Department may consider issuing guidance regarding recommended best practices with respect to the DAC's duties.

9. COMMENT:

The position of Dignity Act Coordinator (DAC) is most effective when parents have direct access. To ensure that parents and guardians know who the DAC is, it is recommended that the proposed rule be revised to add more specific requirements in regards to making this information public, including: mandating posting of the name of the DAC on school web pages, mandating posting the name and contact information of the DAC in areas deemed "highly visible" in

school buildings, and sending parents a mailing at the beginning of the year with the name of the DAC and his or her contact information.

DEPARTMENT RESPONSE:

The Department agrees that parents and persons in parental relation should have access to DAC contact information. Communication between persons in parental relation, teachers, and the DAC and other educational professionals within the school is essential to the overall support and success of students. Therefore, section 100.2(jj)(4)(ii) has been revised to require that the name, designated school and contact information of each DAC be provided by (1) including this information in the code of conduct and updates posted on the Internet web site, if available, of the school or school district, or of the board of cooperative educational services; (2) including the information in the plain language summary of the code of conduct provided to all persons in parental relation to students before the beginning of each school year; (3) including the information in at least one district or school mailing per school year to parents and persons of parental relation and, if such information changes, in at least one subsequent district or school mailing as soon as practicable thereafter; (4) posting the information in highly-visible areas of school buildings; and (5) making the information available at the district and school-level administrative offices.

10. COMMENT:

The proposed rule should be revised to encourage regular evaluations of training programs school districts to assess their effectiveness, and include evaluations of select school districts and charter schools by Department on at least an annual basis. The Department is also encouraged to evaluate non-

district based professional development services which offer training for either Dignity Act Coordinators or general employee training under the Dignity Act.

DEPARTMENT RESPONSE:

Although the Department agrees that evaluations can be beneficial, there is no requirement in the Dignity Act to provide them and they would be a fiscal burden to impose on school districts and the Department at this time, given that no funding for such evaluations by either school districts or the Department has been provided in the Dignity Act or other legislation.