




TO: The Honorable the Members of the Board of Regents
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: May 17, 2012

AUTHORIZATION(S):



SUMMARY

Issue for Decision

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 Full Board for adoption as an emergency action at the May Regents meeting. A statement of the facts and circumstances which necessitate emergency action is attached.

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 was subsequently revised in response to public comment and discussed at the April Regents meeting. A Notice of Revised Rule Making was published in the State Register on April 25, 2012. Additional

revisions have now been made 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 feedback from the Dignity for All Students Task Force and public comment, the proposed rule has been substantially revised to clarify what is meant by "discrimination and harassment" by providing separate definitions of each term, and to otherwise ensure consistency of definitions between proposed sections 100.2(jj) and 100.2(kk). The proposed rule also enacts certain technical changes to ensure consistency in the terminology used in the proposed rule.

We are recommending that the proposed regulation, as revised, be adopted by emergency action because the regulation requires school districts and charter schools to establish guidelines for required Dignity Act training on or before July 1, 2012. A delay in action to the June Regents meeting would not leave sufficient time for school districts and charter schools to meet this deadline

Recommendation

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

VOTED: that subdivision (jj) of section 100.2 of the Regulations of the Commissioner of Education be added, as submitted, effective May 22, 2012, as an emergency action upon a finding by the Board of Regents that such action is necessary for the preservation of the general welfare, in order to immediately adopt the proposed revised rule so that school districts, boards of cooperative educational services and charter schools are provided with sufficient time to timely develop and establish guidelines for Dignity Act school employee training programs in accordance with the rule's provisions, so that such programs may be timely implemented in the 2012-2013 school year pursuant to statutory requirements.

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, the effective date of the Act. If adopted at the May Regents meeting, the emergency rule will become effective on May 22, 2012 to give school districts, BOCES and charter schools time to develop and establish guidelines for the training programs by the effective date of the Act.

It is anticipated that the emergency rule will be presented for permanent adoption at the July 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.

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 May 22, 2012, as follows:

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

(1) Definitions. As used in this subdivision:

(i) "School property" means in or within any building, structure, athletic playing field, playground, parking lot or land contained within the real property boundary line of a public elementary or secondary school, including a charter school; or in or on a school bus, as defined in section 142 of the Vehicle and Traffic Law.

(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 an employee as defined in Education Law section 1125(3), or 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" means the creation of a hostile environment by conduct or by verbal threats, intimidation or abuse that has or would have the effect of unreasonably and substantially interfering with a student's educational performance, opportunities or benefits, or mental, emotional or physical well-being; or conduct, verbal threats, intimidation or abuse that reasonably causes or would reasonably be expected 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 based on a person's actual or perceived race, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender or sex.

(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 and/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 and/or harassment based on a person's actual or perceived race, color, weight, national origin, ethnic group, religion, religious practice[s], disability, sexual orientation, gender or sex; and

(b) training to enable employees to prevent and respond to incidents of discrimination and/or 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 to handle 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.

(5) Nothing in this subdivision shall be construed to prohibit a denial of admission into, or exclusion from, a course of instruction based on a person's gender that would be permissible under Education Law sections 3201-a or 2854(2)(a) and Title IX of the Education Amendments of 1972 (20 U.S.C. section 1681, et seq.), or to prohibit, as discrimination based on disability, actions that would be permissible under section 504 of the Rehabilitation Act of 1973.

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
STATEMENT OF FACTS AND CIRCUMSTANCES WHICH NECESSITATE EMERGENCY ACTION

The proposed rule is necessary to implement provisions of the Dignity Act. The statute added a new Article 2 to the Education Law and new section 13 of Article 2 to require school districts, boards of cooperative educational services (BOCES) and charter schools to create:

(i) policies to create a school environment free from discrimination and harassment;

(ii) guidelines to be used in school training programs to discourage the development of discrimination or harassment and that are designed to raise awareness and sensitivity of school employees to potential discrimination or harassment and enable employees to prevent and respond to discrimination or harassment; and

(iii) guidelines relating to the development of nondiscriminatory instructional and counseling methods, and requiring that at least one staff member of every school be thoroughly trained to handle human relations in the areas of race, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender and sex.

The proposed rule establishes standards and criteria for the issuance of such policies and guidelines.

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 was subsequently revised in response to public comment and discussed at the April Regents meeting. A Notice of Revised Rule Making was published in the State Register on April 25, 2012.

Additional revisions have now been made to the proposed revised rule in response to public comment. Because the Board of Regents meets at fixed intervals, the earliest the proposed revised rule could be presented for regular adoption, after publication in the State Register and expiration of the 30-day public comment period provided for revised rule makings pursuant to the State Administrative Procedure Act (SAPA) section 202(4-a), is the July 16-17, 2012 Regents meeting. Furthermore, pursuant to SAPA, the earliest effective date of the proposed amendment, if adopted at the July meeting, would be August 1, 2012, the date a Notice of Adoption would be published in the State Register. However, the Dignity Act takes effect on July 1, 2012 and school districts, BOCES and charter schools must establish by such date guidelines for the implementation of school employee training programs under the Act.

Emergency action is therefore necessary for the preservation of the general welfare to immediately adopt the proposed revised rule so that school districts, BOCES and charter schools are provided sufficient time to timely develop and establish guidelines for Dignity Act school employee training programs in accordance with the

rule's provisions, so that such programs may be timely implemented in the 2012-2013 school year pursuant to statutory requirements.

It is anticipated that the proposed rule will be presented to the Board of Regents for adoption as a permanent rule at their July 16-17, 2012 meeting, which is the first scheduled meeting after expiration of the 30-day public comment period for revised rule makings mandated by the State Administrative Procedure Act.

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 Revised Rule Making in the State Register on April 25, 2012, the State Education Department received the following comments.

1. COMMENT:

Concern was expressed that the definitions in the proposed section 100.2(jj) are inconsistent with the definitions in proposed section 100.2(kk), which relates to reporting requirements under the Dignity for All Students Act (L. 2010, Ch.482) and is the subject of a separate rule making published in the State Register on April 11, 2012 [EDU-15-12-00011-P]. It was recommended that the definitions used in sections 100.2(jj) and 100.2(kk) be incorporated into a single definitions section.

DEPARTMENT RESPONSE:

The Department acknowledges that the definitions in sections 100.2(jj) and 100.2(kk) are inconsistent, but does not believe it would be appropriate to combine the definitions into a single section because the training provisions and the reporting provisions are in two different subdivisions of section 100.2. Instead, the Department has revised the definitions in proposed section 100.2(jj)(1) to provide for separate definitions of "discrimination" and "harassment" and to be otherwise consistent with the definitions in proposed section 100.2(kk)(1).

2. COMMENT:

In some places in the proposed rule the phrase "discrimination and harassment" is used, in other places the phrase "discrimination and/or harassment" is used. Concern was expressed that these inconsistencies will result in ambiguity, unnecessary questions and potential misinterpretations.

DEPARTMENT RESPONSE:

The Department agrees and has revised the phrases, where necessary, to ensure consistency.

3. COMMENT:

Although proposed section 100.2(jj)(4)(ii) requires that the name and contact information of the Dignity Act Coordinator (DAC) be publicized, the DAC may not always be the person responsible for receiving discrimination and harassment complaints from students and/or parents. Some districts may assign the complaint function to their Title IX Officer or an ombudsman. It may be more appropriate to publicize the name and contact information of the complaint person and/or the DAC.

DEPARTMENT RESPONSE:

The Department believes that it would be potentially confusing to the public to list contact information for individuals other than the DAC, and that the DAC should serve as the point person for the process. In instances where the school district (district), board of cooperative educational services (BOCES) or charter school has assigned the complaint function to another staff member, the DAC should be responsible for following-up with this person when contacted by a student or parent.

4. COMMENT:

The proposed rule does not make it clear that all students are covered by its provisions prohibiting discrimination and harassment and is susceptible to being applicable only to students who are discriminated against or harassed on the basis of race, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender or sex.

DEPARTMENT RESPONSE:

The Department has revised the proposed rule to provide separate definitions of "discrimination" and "harassment." The definition of discrimination provides that such terms includes discrimination against any student. The Department believes that the definition of harassment in the proposed rule is sufficiently worded to be clear it applies to any student. In addition, the Department intends to issue guidance to make it clear that all students are covered by its provisions prohibiting discrimination and harassment.

5. COMMENT:

The proposed rule does not sufficiently emphasize the need for districts to take non-punitive action when a complaint of harassment or bullying is received. First and foremost, districts need to provide support and guidance to the target student. However, the importance of emphasizing social/emotional learning for both the "bullied" and the "bully" has not been adequately addressed.

DEPARTMENT RESPONSE:

A regulation change is not necessary. The proposed rule provides broad flexibility for districts and schools to establish policies and guidelines for preventing and responding to incidents of discrimination and harassment according to local needs and individual circumstances, which can include non-punitive social/emotional learning, and

the Department encourages districts and schools to do so. The Department may consider addressing this issue in guidance.