

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

The New York State Education Department (NYSED) and the Dignity Act Task Force Local Policy and Implementation Work Group developed this guidance document to help schools, districts and BOCES in updating their Codes of Conduct in accordance with the requirements of the amended Dignity Act and its implementing regulations (Education Law

“Emotional harm” that takes place in the context of “harassment or bullying” means harm to a student’s emotional well-being through creation of a hostile school environment that is so severe or pervasive as to unreasonably and substantially interfere with a student’s education.

“Employee” means any person receiving compensation from a school district or employee of a contracted service provider or worker placed within the school under a public assistance employment program, pursuant to title 9-B of article 5 of the Social Services Law, and consistent with the provisions of such title for the provision of services to such district, its students or employees, directly or through contract, whereby such services performed by such person involve direct student contact (Education Law §§11[4] and 1125[3]).

“Gender” means a person’s actual or perceived sex and includes a person’s gender identity or expression (Education Law §11[6]).

“Sexual Orientation” means actual or perceived heterosexuality, homosexuality, or bisexuality (Education Law §11[5]).

“Harassment/bullying” means the creation of a hostile environment by conduct or by threats, intimidation or abuse, including cyberbullying as defined in Education Law §11(8), 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 or physical well-being; or
- (b) reasonably causes or would reasonably be expected to cause a student to fear

- o sex
- o sexual orientation
- o gender (which includes a person's actual or perceived sex, as well as gender identity and expression).

This is not an exhaustive list. For example, students with acne or short stature, who are subjected to discrimination, harassment, or bullying are also covered by the Dignity Act. Schools/districts may add to this list based on their own regional or specialized needs (for example, students of incarcerated parents).

From a practical standpoint, in addition to the Dignity Act requirements, schools, districts and BOCES should consult with their attorneys to ensure that their Codes of Conduct and policies comply with federal civil rights laws and regulations enforced by the United States Department of Education's Office for Civil Rights (OCR), including Title VI of the Civil Rights Act of 1964, which prohibits discrimination on the basis of race, color, or national origin; Title IX of the Education Amendments of 1972, which prohibits discrimination on the basis of sex; and Section 504 of the Rehabilitation Act of 1973 and Title II of the Americans with Disabilities Act of 1990, both of which prohibit discrimination on the basis of disability. Although the intent of these federal civil rights statutes and the Dignity Act are related to each other in some ways, their requirements and definitions are separate and distinct from one another. Thus, NYSED recommends that schools, districts and BOCES, as well as charter schools, consult with their attorneys in developing their policies to make sure that they align with both state and federal law and regulatory requirements regarding discrimination and harassment.

NYSED further recommends that schools, districts, BOCES, and charter schools review federal guidance on discrimination and harassment, including, but not limited to OCR's [Dear Colleague Letter regarding harassment and bullying](#) (October 26, 2010), which can be found at:

www2.ed.gov/about/offices/list/ocr/letters/colleague-201010.html

and OCR's "Dear Colleague" Letter regarding sexual violence, preventative measures and post-bullying/harassment measures that need to be implemented (April 4, 2011) found at:

<http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.pdf>

Scope of Cyberbullying

As discussed above, the amended Dignity Act prohibits discrimination including harassment/bullying/cyberbullying, of students on school property, including at school functions, by any student and/or employee. As the amended act states, cyberbullying may include, among other things, the use, both on and off school property, of electronic technology, including, but not limited to, e-mail, instant messaging, blogs, chat rooms, pagers, cell phones, gaming systems and social media websites, to deliberately harass or threaten others.

Since this area of the law continues to evolve, it is recommended that schools, districts, BOCES, and charter schools consult with their attorneys in developing policies and when imposing disciplinary consequences for off campus behavior and periodically reviewing

existing policies on bullying, cyberbullying, and sexting to determine whether the proposed policy or discipline is consistent with case law and Commissioner's decisions.

Schools, districts, BOCES, and charter schools, in consultation with their attorneys, may also consider non-punitive options as part of a progressive discipline model when addressing problematic off-campus behavior. Additionally, schools, districts, BOCES, and charter schools have a duty to prevent or address in-school harassment regardless of whether the involved students are also experiencing harassment outside of school.

Dignity Act Coordinator (DAC)

The Dignity Act also requires that at least one staff member at 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 (Education Law §13[3]). This staff member should be referred to as the Dignity Act Coordinator (DAC) and is appointed by the Board of Education.

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 by listing such information in the Code of Conduct. This information shall also be included in the plain language summary of the Code of Conduct, or to parents or persons in parental relation at least once per school year in a manner determined by the school, including through electronic communication and/or sending such information home with students. A change in the name and/or contact information of a Dignity Act Coordinator shall not be deemed to constitute a revision to the Code of Conduct so as to require a public hearing.

Disciplinary and Remedial Consequences

NOTE: If the Board adopts a "Student Discrimination, Harassment and Bullying Prevention and Intervention" policy, then in order to avoid duplication with that policy, some of the material that follows can be mentioned briefly in the Code of Conduct. However, if the Board does not adopt such a policy, then the Code of Conduct must address the following strategies in enough detail to meet the requirements of the law and regulation.

The Dignity Act emphasizes the creation and maintenance of a positive learning environment for all students. In addition, the amended Dignity Act requires the development of measured, balanced, progressive, and age-appropriate responses to discrimination, harassment, and bullying of students by students and/or employees. Remedial responses should be included in the Code of Conduct and place the focus of discipline on discerning and correcting the reasons why discrimination, harassment, and bullying occurred. The remedial responses should also be designed to correct the problem behavior, prevent another occurrence of the behavior, and protect the target of the act. Appropriate remedial measures may include, but are not limited to:

corrective instruction that reemphasizes behavioral expectations or other relevant learning or service experience;

engagement of student in a reflective activity, such as writing an essay about the misbehavior and its impact on others and how the student might handle the situation differently in the future and/or make amends to those who have been harmed;

supportive intervention and/or mediation where constructive conflict resolution is modeled;

behavioral assessment or evaluation;

behavioral management plans or behavior contracts, with benchmarks that are closely monitored;

student counseling and parent conferences that focus on involving persons in parental relation in discipline issues.

Reporting Discrimination, Harassment and Bullying

The Code of Conduct offers an opportunity to reinforce the importance of reporting incidents of discrimination, harassment and bullying. The Code of Conduct must include procedures by which violations are reported and investigated, and by which disciplinary measures are imposed and implemented.

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

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

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

Code of Conduct Publication and Training

Under Education Law §2801(4) and 8 NYCRR §100.2(l)(2)(iii)(b), districts and BOCES must ensure community awareness of the Code of Conduct provisions through various specified means, including, but not limited to, posting the current Code of Conduct in an easily accessible place on their Internet web site, if available.

Additionally, the Dignity Act requires that a summary of the Code of Conduct be mailed to all students, in an age-appropriate version, written in plain-language, to ensure that students understand the standards of respect and appropriate behavior that the school community expects from them.

As part of ensuring effective implementation of the Code of Conduct, it is required that schools, districts and BOCES provide training to staff that specifically highlights the Dignity Act provisions, such as the prohibition against discrimination, harassment and bullying, reporting requirements and the availability of each school's DAC. Training shall address the social patterns of discrimination, harassment and bullying, the identification and mitigation of those behaviors, as well as strategies for effectively addressing problems of exclusion, bias and aggression in the school setting.

The Dignity Act permits the denial of admission into, or exclusion from, a course of instruction based on a person's gender that would be permissible under Education Law §§2854(2)(a), Education Law § 3201-a and Title IX of the Education Amendments of 1972 (20 USC §1681, et. seq.). Similarly, the Dignity act allows denial of admission or exclusion based on disability that would be permissible under §504 of the Rehabilitation Act of 1973.