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Dignity for All Students Act Student Discrimination, Harassment and Bullying Prevention and Intervention

Guidance for Local Implementation

Updated July 2013

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Notes about using this guide:

- ***All citations are to New York law and regulation, unless otherwise indicated.***
- ***This guide is not intended to cover every possible action or best practice regarding implementation of the Dignity Act. Districts, BOCES, and charter schools are advised to consult with community stakeholders, including students, school staff, and persons in parental relation, as well as their attorneys regarding the implementation of the Dignity Act.***
- ***Districts, BOCES, and charter schools should take the opportunity to review how federal civil rights protections and complaint procedures fit in with their respective policies and procedures, including their discrimination, harassment, bullying and cyberbullying, prevention and/or intervention programs.***
- ***The amended Dignity Act becomes effective on July 1, 2013, therefore it is recommended that districts, BOCES, and charter schools work to ensure that their Dignity Act implementation occurs in a timely manner.***

GUIDANCE FOR LOCAL IMPLEMENTATION

INTRODUCTION

This guide was originally issued in June of 2012 as “Sample Local Policy Guidelines”. Since that time the Dignity for All Students Act (Dignity Act) was amended by Chapter 102 of the Laws of 2012, with an effective date of July 1, 2013. This guide has been updated to conform to the amended law. It is offered as a voluntary tool to assist school districts (districts), boards of cooperative educational services (BOCES), and charter schools in the implementation of the Dignity Act. It was developed with input from the Dignity Act Task Force.

Be aware that the Dignity Act does not alter any existing anti-discrimination obligations under federal civil rights law, such as Title VI of the Civil Rights Act of 1964; Title IX of the Education Amendments of 1972; Section 504 of the Rehabilitation Act of 1973; and Title II of the Americans with Disabilities Act of 1990, and their respective implementing regulations; (e.g., Titles II, VI, IX, Section 504). Districts, BOCES and charter schools should consult with their attorneys to ensure that their policies comply with federal civil rights laws and regulations enforced by the U.S. Department of Education, Office of Civil Rights. NYSED also recommends that districts, BOCES, and charter schools review federal guidance on discrimination and harassment, including, but not limited to OCR’s Dear Colleague Letters regarding harassment and bullying (October 26, 2010 and April 4, 2011), which can be found at:

www2.ed.gov/about/offices/list/ocr/letters/colleague201010.html and
<http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.html>.

In addition, the Dignity Act does not alter the requirement of adopting and publishing a nondiscrimination policy. For guidance on developing a nondiscrimination policy, please visit the United States Department of Education's Office of Civil Rights (OCR) website at:
<http://www2.ed.gov/about/offices/list/ocr/poloverview.html>

Districts, BOCES, and charter schools, in consultation with their attorneys, might also want to consider non-punitive options, as well as a progressive model of discipline, when addressing problematic off-school property/off-school campus behavior. Moreover, districts, BOCES, and charter schools must address and make every effort to prevent in-school harassment regardless of whether the students involved are also experiencing harassment outside of school.

THE FOLLOWING SECTION INCLUDES SUGGESTED LANGUAGE FOR DIGNITY ACT IMPLEMENTATION THAT COULD BE CUSTOMIZED AND INCORPORATED INTO LOCAL POLICY

Bullying – A Description of the Behavior

Although the amended Dignity Act provides a legal definition of bullying it is the board's intention to, prevent bullying wherever possible. The following guidance is offered to help identify the behavior so staff, persons in parental relations, and students can recognize it early and prevent escalation.

Bullying has been described as an unwanted, aggressive behavior that involves a real or perceived power imbalance. The behavior is repeated, or has the potential to be repeated, over time. Bullying can occur before and after school hours, in a school building or at locations such as on a playground or on a school bus while a student is traveling to or from school, or on the Internet. Students who are bullied and those who bully others may potentially have serious and lasting problems. According to the United States Department of Education (USDOE), www.stopbullying.gov/what-is-bullying/definition/index.html, bullying generally involves the following characteristics:

- **An Imbalance of Power:** Students who bully others use their power, such as physical strength, access to embarrassing information, or popularity, to control or harm others. Power imbalances can change over time and in different situations, even if they involve the same people.

- **The Intent to Cause Harm:** Determining the intent of an individual who demonstrates bullying behaviors may be difficult. The perception of the person who is the target of those behaviors should also be considered.
- **Repetition:** Bullying behaviors generally happen more than once or have the potential to happen more than once.

Examples of bullying include, but are not limited to:

- **Verbal:** Name-calling, teasing, inappropriate sexual comments, taunting, and threatening to cause harm.
- **Social:** Spreading rumors about someone, excluding others on purpose, telling other students not to be friends with someone, and embarrassing someone in public.
- **Physical:** Hitting, punching, shoving, kicking, pinching, spitting, tripping, pushing and taking or breaking someone's things.

Microaggressions are brief, everyday exchanges, verbal and non-verbal, that send messages to certain individuals that because of their group membership, they have little worth. These small exclusions, expressions, and gestures are often overlooked as contributing to negative school climate and over time can cause emotional harm. Some examples include:

- Avoiding an empty seat in class because it is next to a larger girl.
- Heavy sighing to indicate disapproval each time a student of a particular race walks into the classroom.

Prevention

The school setting provides an opportunity to teach students, and emphasize among staff, that cooperation with and respect for others is a key value of the district, (BOCES, or charter school). A program geared to prevention is designed to not only decrease incidents of harassment, bullying and/or discrimination, but to help students build more supportive relationships with one another by integrating the prevention and intervention program into classroom instruction. Staff members and students should be sensitized, through district-wide, BOCES-wide, or charter school-wide professional development and instruction, to the warning signs of harassment, bullying and/or discrimination, as well as to their responsibility to become actively involved in the prevention of such acts before they occur.

The components of such an effort involve the following:

- Following the voluntary principles and practices of “Educating the Whole Child Engaging the Whole School: Guidelines and Resources for Social and Emotional Development and Learning (SEDL) in New York State,”¹ district curriculum will emphasize empathy, tolerance, and respect for others. These guidelines can be found at: www.p12.nysed.gov/sss/sedl/SEDLguidelines.pdf.
- Learning about and identifying the early warning signs and precursor behaviors that can lead to harassment, bullying and/or discrimination.
- Gathering information about harassment, bullying and/or discrimination directly from students (through surveys and other mechanisms); analyzing and using the data gathered to assist in decision-making about programming and resource allocation.
- Establishing clear school-wide rules about harassment, bullying and/or discrimination through a district or BOCES Code of Conduct developed in accordance with the requirements contained in Education Law §§ 12(2) and 2801 and 8 NYCRR §100.2(l), or in the case of a charter school, establishing such rules in its disciplinary rules and procedures, pursuant to Education Law §2851(2)(h) and 8 NYCRR §119.6, or, if applicable, in its Code of Conduct, that comply with the Dignity Act requirements. New York State Education Department’s (NYSED) Dignity for All Students Act Guidance for Updating Codes of Conduct can be found at: <http://www.p12.nysed.gov/dignityact/documents/DASACodeofConductGuidance.pdf>
- Training adults in the school community to respond sensitively and consistently to harassment, bullying and/or discrimination.
- Raising awareness among school staff, through training, of the school experiences of student populations specified in the Dignity for All Students Act, including, but not limited to; students of different races, weights, national origins, ethnic groups, religions, religious practices, mental or physical abilities, sexual orientations, gender or gender identity/expression, and sex; social stigma in the school environment, gender norms in the school environment, and strategies for preventing and responding to harassment, bullying and/or discrimination.
- Providing adequate supervision, particularly in less structured areas, including, but not limited to, hallways, cafeterias, school buses and playgrounds.
- Raising parental and community awareness and involvement regarding harassment, bullying and/or discrimination prevention and intervention.
- Providing examples of positive behaviors that are age appropriate.
- Instituting policies and practices that create a positive school climate.
- Using educational opportunities or curricula, including, if applicable, the Individual Educational Program (IEP) or 504 Plans, to address the underlying causes and effects of harassment, bullying and/or discrimination.

¹ It should be noted these voluntary guidelines, which were adopted by the New York State Board of Regents on July 18, 2011, were developed to assist districts in their voluntary incorporation of social and emotional development into elementary and secondary school education programs (see also, Education Law §305[35]).

- Educating students regarding safe and appropriate use of the Internet and social media.

*NOTE: The paragraph below provides sample language for the creation of a district-wide, BOCES-wide, or charter school-wide committee to assist in the effective implementation of the Dignity Act. **The creation of such a committee is voluntary on the part of the Board of Education.** If a Board chooses to adopt this approach, it is recommended that the committee consist of various constituencies. The board may choose to give this responsibility to an existing district-wide, BOCES-wide, or charter school-wide committee, such as wellness, safety or shared decision-making, rather than establishing a new one. The board may also choose to involve Dignity Act Coordinators (see below) at one or more schools within the district, BOCES, or charter school in these efforts. Districts, BOCES, and charter schools should customize the wording of the following paragraph to reflect the applicable committee names.*

In order to implement this program, the Board of Education authorizes the creation of a district-wide Committee or Task Force on Harassment, Bullying and/or Discrimination Prevention and Intervention, as well as Harassment, Bullying and/or Discrimination Prevention and Intervention Coordinating Committees in each school. The Board, in collaboration with the Superintendent, shall appoint representatives from staff, administration, students, and/or persons in parental relation to the district-wide committee on an annual basis. The district-wide, BOCES-wide, or charter school-wide task force and the school-level committee will assist the administration in developing and implementing specific procedures on early identification of harassment, bullying and or discrimination, and other preventative strategies. In addition, the program may opt to include reporting, investigating, remedying and tracking allegations of harassment, bullying and/or discrimination beyond the reporting requirements established by law and regulation.

Intervention

Intervention by adults and bystanders, including students, with proper training can be an important step in preventing escalation and resolving issues at the earliest stages.

Remedial responses to harassment, bullying and/or discrimination will likely involve staff intervention. Responses may include measures designed to correct the behavior, prevent another occurrence of the behavior, and protect the targeted student. Remediation can be targeted to the individual(s) involved in the aforementioned behavioral approaches, or environmental approaches which are targeted to the school or district, BOCES, or charter school as a whole.

In addition, intervention will focus upon the safety of the targeted student. Staff who are aware of incidents of harassment, bullying and/or discrimination are expected to refer the targeted student to designated resources for assistance and/or intervene in accordance

with this policy and the relevant provisions of the code of conduct or, in the case of a charter school, the relevant provisions of its disciplinary rules and procedures, or, if applicable, in its Code of Conduct.

Provisions for Students Who Do Not Feel Safe at School

The board acknowledges that, notwithstanding actions taken by the district, BOCES, or charter school staff, intervention might require a specific, coordinated approach, if a student does not feel safe at school. Students who do not feel safe at school are limited in their capacity to learn and reach their academic potential. Staff, when aware of incidents of harassment, bullying and/or discrimination should determine if accommodations are needed in order to help ensure the safety of the student and bring this to the attention of the building principal, his/her designee, or other staff as determined by the principal/designee. The building principal, or designated staff, the student, and the person in parental relation to the student shall work together to define and implement any needed accommodations.

The district, BOCES, or charter school recognizes that there is a need to balance accommodations that enhance student safety against the potential of further stigmatizing the targeted student. Therefore, each case shall be handled individually, and the student, person in parental relation, and school administration shall collaborate to establish safety provisions that best meet the needs of the student. Follow-up discussion and/or meetings will be scheduled, as needed, to ensure that safety concerns have been adequately addressed and to determine when and if accommodations need to be added, changed, or discontinued.

Training

NOTE: Section 100.2(jj) of the Commissioner's Regulations holds that on or before July 1, 2013, each school district and each charter school shall establish policies, procedures and guidelines for its school or schools to implement, commencing with the 2013-2014 school year and continuing in each school year thereafter, Dignity Act school employee training programs to promote a positive school environment that is free from harassment, bullying and/or discrimination; and to discourage and respond to incidents of harassment, bullying and/or discrimination on school property or at a school function, or off school property pursuant to sub-clause (1)(viii)(c)(iii) of this subdivision. Such policies, procedures and 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.

The board recognizes that professional development is needed in order to implement an effective harassment, bullying and discrimination prevention and intervention program. The Superintendent and the District Professional Development Team shall incorporate training

to support this program in the annual professional development plan, and provide additional training as needed. Training opportunities shall be provided to all employees, including, but not limited to teachers, administrators, monitors, aides, bus drivers, coaches, custodians, cafeteria staff, and hall monitors. Such training shall:

- Raise awareness and sensitivity to potential acts of harassment, bullying and discrimination directed at students.
- Address the social patterns of harassment, bullying and discrimination, the identification and mitigation of such acts, and strategies for effectively addressing problems of exclusion, bias and aggression in educational settings.
- Enable employees to prevent and respond to incidents of harassment, bullying and/or discrimination.
- Make school employees aware of the effects of harassment, bullying, cyberbullying, and/or discrimination of students.
- Ensure the effective implementation of school policy on school conduct and discipline
- Include safe and supportive school climate concepts in curriculum and classroom management.

In compliance with Education Law §13(3), at least one licensed and/or certified staff member at every school must be thoroughly trained in human relations in the areas of race, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender (which includes a person's actual or perceived sex, and gender identity and expression), and sex. **This staff member should be referred to as the Dignity Act Coordinator (DAC). The person designated as the DAC must be licensed and/or certified by the Commissioner as a classroom teacher, school counselor, school psychologist, school nurse, school social worker, school administrator or supervisor, or superintendent of schools.**

Reporting and Investigation

Students who have been subjected to harassment, bullying and/or discrimination, persons in parental relation whose children have been subjected to such behavior, or other students who observe or are told of such behavior, are encouraged and expected to make verbal and/or written reports to the principal, superintendent, and/or designated school personnel in accordance with the training and guidelines provided and the relevant provisions of the district's or BOCES' Code of Conduct, or in the case of a charter school, its disciplinary rules and procedures, or, if applicable, in its Code of Conduct. **All district, BOCES, and/or charter school staff, when aware of harassment, bullying and/or discrimination, are required to orally report the incident(s) within one school day to the principal, superintendent or his/her designee and report it in writing within two school days after making an oral report.**

Complaints shall always be documented, tracked, investigated, and remediated in accordance with the regulations and procedures accompanying this policy, or, if applicable, **[insert title and policy number of nondiscrimination and harassment, including**

sexual harassment policies] and the district's or BOCES' Code of Conduct, or in the case of a charter school, its disciplinary rules and procedures, or, if applicable, in its Code of Conduct. If a staff person is unsure of the reporting procedure, he or she is expected to inquire about how to proceed by speaking with his/her supervisor.

The results of any such investigation shall be reported to both the targeted student and the alleged offender, as well as their respective persons in parental relation, in accordance with the policy and/or the district's or BOCES' Code of Conduct, or in the case of a charter school, its disciplinary rules and procedures, or, if applicable, in its Code of Conduct. Local policies should be followed regarding communicating the results of the investigation. If either party and/or their respective persons in parental relation disagree with the results of the investigation, that party should be advised of any local policies regarding how to proceed in such instances.

NOTE: The Dignity Act is silent regarding obligations to report incidents to parents. It is recommended that language regarding parent notification be included in the development of local policy.

In certain circumstances, disclosure to the persons in parental relation of the basis for which a student is harassed, bullied and/or discriminated against may result in additional negative consequences to the student's health and well-being. Prior to notification of any person in parental relation regarding an incident of harassment, bullying and/or discrimination, school authorities must consider notification as they would any other educationally-relevant decision, taking into account the health, well-being, and safety of students involved in the incident.

The school district may seek counsel from the school attorney to determine the best course of action. In some cases, such as where a student is being targeted with anti-gay language, if there is reason to fear that that student may face negative consequences by notifying his/her persons in parental relation, regardless of how she/he actually identifies, this should be taken into account.

NOTE: Section 100.2(kk) of the Commissioner's Regulations for the Board of Regents' defines a "material incident of harassment, bullying and/or discrimination" for Dignity Act reporting purposes and to implement the reporting requirements of the Dignity Act.

If the results of the investigation reveal that a material incident of harassment, bullying and/or discrimination, as defined in Commissioner's Regulation 100.2(kk), has occurred, information shall be tracked, recorded, and reported in a manner prescribed by the Commissioner.

Student Disciplinary Consequences/Remediation

While the primary focus of this policy is on prevention, acts of harassment, bullying and/or discrimination may still occur. When such acts occur, student offenders will be given a clear message that their actions are inappropriate, will not be tolerated, and are inconsistent with the concepts of tolerance, respect for others, and the fostering of civility in public schools in order to provide a safe and supportive school environment for all

students. In accordance with a progressive model of discipline embodied in the Code of Conduct, student offenders shall further be advised that their behavior must improve. Student offenders will receive in-school guidance on making positive choices in their relationships with others. If appropriate, disciplinary action shall be taken by the administration in accordance with the district's or BOCES' Code of Conduct, or in the case of a charter school, its disciplinary rules and procedures, or, if applicable, in its Code of Conduct. If the behavior rises to the level of a criminal act, law enforcement shall be contacted promptly by the principal, superintendent, or his/her designee.

This policy is meant to promote progressive discipline and intervention, as opposed to a "zero tolerance" approach. The response to a student's violations of the policy shall be age-appropriate and include both consequences and appropriate remedial responses. Consequences for a student who commits an act or acts of harassment, bullying and/or discrimination shall be unique to the individual incident and shall vary in method and severity according to the nature of the behavior, the developmental age of the student, the student's previous disciplinary record, other extenuating circumstances, and must be consistent with the district's or BOCES' Code of Conduct, or in the case of a charter school, its disciplinary rules and procedures, or, if applicable, its Code of Conduct.

Investigating and Responding to Allegations of Staff-to-Student Harassment, Bullying and/or Discrimination

In the case of a report of alleged staff-to-student bullying, reporting, investigation, and response must follow all applicable school and/or district policies and procedures, including contractual provisions and due process obligations related to staff-to-student misconduct.

Non-Retaliation

Any person having reasonable cause to suspect that a student has been subjected to harassment, bullying and/or discrimination by a student and/or an employee who, acting reasonably and in good faith, either reports such information to school officials, to the Commissioner, or to law enforcement authorities or otherwise initiates, testifies, participates or assists in any formal or informal proceedings, will have immunity from any civil liability that may arise from the making of such a report or from initiating, testifying, participating or assisting in such formal or informal proceedings.

Districts, BOCES, and charter schools and their respective employees are prohibited from taking, requesting or causing a retaliatory action against any such person, who, acting reasonably and in good faith, either makes such a report or initiates, testifies, participates or assists in such formal or informal proceedings (Education Law §16).

Dissemination, Monitoring, Review, and Reporting

This policy shall be posted on the district's Internet website (if one exists.) A plain-language summary of the policy will be provided to students, persons in parental relation and school employees at least once during the school year. Schools may voluntarily opt to develop a local complaint form to assist in the reporting of incidents of harassment, bullying and/or discrimination.

Each year, as a part of the required annual review of the Code of Conduct,² this policy may be reviewed to assess its effectiveness and compliance with state and federal law. If changes are needed, the proposed policy revisions could be recommended to the board for its consideration.

In addition to tracking harassment, bullying and/or discrimination incidents for purposes of district-wide analysis and annual statewide reporting, building principals will report incident data to the Superintendent periodically throughout the school year, on a schedule to be determined by the Superintendent.

The board shall receive the annual Violent and Disruptive Incident Report (VADIR), as well as other relevant data, for each school and for the district as a whole, with particular attention to the trends in incidents of harassment, bullying and/or discrimination. Based on the review of the data, the board may consider further action, including but not limited to modification of this policy and additional training. Districts must ensure that they report such information to the public in a manner that complies with student privacy rights under the Family Educational Rights and Privacy Act (FERPA).

Cross-ref: Insert applicable nondiscrimination, special education, harassment, including sexual harassment, staff development, computer acceptable use/Internet safety and Code of Conduct or disciplinary rules and procedures cross-references

Adoption date:

² See Education Law §2801(5) and 8 NYCRR §100.2(l)(2)(iii)(a).