

THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY

# TABLE OF CONTENTS

<b>INTRODUCTION.....</b>	<b>2</b>
<b>BULLYING- A DESCRIPTION OF THE BEHAVIOR.....</b>	<b>4</b>
<b>PREVENTION.....</b>	<b>5</b>
<b>INTERVENTION .....</b>	<b>7</b>
<b>PROVISIONS FOR STUDENTS WHO DO NOT FEEL SAFE AT SCHOOL .....</b>	<b>8</b>
<b>TRAINING .....</b>	<b>8</b>
<b>REPORTING AND INVESTIGATION .....</b>	<b>9</b>
<b>DISCIPLINARY CONSEQUENCES/REMEDATION .....</b>	<b>10</b>
<b>INVESTIGATING AND RESPONDING TO ALLEGATIONS OF</b>	
<b>STAFF-TO-STUDENT HARASSMENT, BULLYING AND/OR DISCRIMINATION .....</b>	<b>11</b>
<b>NON-RETALIATION.....</b>	<b>11</b>
<b>DISSEMINATION, MONITORING, REVIEW, AND REPORTING .....</b>	<b>11</b>



[www2.ed.gov/about/offices/list/ocr/letters/colleague201010.html](http://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/policyoverview.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

- x **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.
- x **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:**

- x **Verbal:** Name-calling, teasing, inappropriate sexual comments, taunting, and threatening to cause harm.
- x **Social:** Spreading rumors about someone, excluding others on purpose, telling other students not to be friends with someone, and embarrassing someone in public.
- x **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

The components of such an effort involve the following:

- x 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, <sup>1</sup> district curriculum will emphasize empathy, tolerance, and respect for others. These guidelines can be found at: [www.p12.nysed.gov/sss/sedl/SEDLguidelines.pdf](http://www.p12.nysed.gov/sss/sedl/SEDLguidelines.pdf).
- x Learning about and identifying the early warning signs and precursor behaviors that can lead to harassment, bullying and/or discrimination.
- x 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.
- x 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>
- x Training adults in the school community to respond sensitively and consistently to harassment, bullying and/or discrimination.
- x Raising awareness among school staff, through training, of the school experiences of student populations specified All Stty

- x 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,

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



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:

- x Raise awareness and sensitivity to potential acts of harassment, bullying and discrimination directed at students.
  - x 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.
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**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 C onsequences/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.

Each year, as a part of the required annual review of the Code of Conduct,<sup>2</sup> 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:

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