

AMENDMENT OF THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to Education Law sections 11, 12, 13, 14, 207, 305, 2801 and 2854(1)(b), and Chapter 102 of the Laws of 2013.

1. Paragraph (2) of subdivision (l) of section 100.2 of the Regulations of the Commissioner of Education is amended, effective July 1, 2013, as follows:

(2) Code of Conduct

(i) . . . .

(ii) The code of conduct shall include, but is not limited to:

(a) provisions regarding conduct, dress and language deemed appropriate and acceptable on school property and at school functions, and conduct, dress, and language deemed unacceptable and inappropriate on school property and at school functions and provisions regarding acceptable civil and respectful treatment of teachers, school administrators, other school personnel, students, and visitors on school property and at school functions, including the appropriate range of disciplinary measures which may be imposed for violation of such code, and the roles of teachers, administrators, other school personnel, the board of education, and parents or persons in parental relation;

(b) provisions prohibiting [discrimination and] harassment, bullying, and/or discrimination against any student, by employees or students [on school property or at a school function,] that creates a hostile school environment by conduct [, with or without physical contact and/or by verbal] or by threats, intimidation or abuse, including cyberbullying as defined in Education Law section 11(8), [of such a severe nature] that either:

(1) 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, including conduct, threats, intimidation or abuse that reasonably causes or would reasonably be expected to cause emotional harm; or

(2) reasonably causes or would reasonably be expected to cause physical injury to a student or to cause a student to fear for his or her physical safety,

(3) Such conduct shall include acts of harassment and/or bullying that occur:

(i) on school property, as defined in section 100.2(kk)(1)(i) of this Part; and/or

(ii) at a school function, as defined in section 100.2(kk)(1) of this Part; or

(iii) off school property where such acts create or would foreseeably create a risk of substantial disruption within the school environment, where it is foreseeable that the conduct, threats, intimidation or abuse might reach school property.

(4) For purposes of this paragraph, the term "threats, intimidation or abuse" shall include verbal and non-verbal actions.

(5) For purposes of this paragraph, "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.

(6) Such conduct shall include, but is not limited to [ , threats, intimidation, or abuse] acts based on a person's actual or perceived race, color, weight, national origin, ethnic group, religion, religious practices, disability, sexual orientation, gender as defined in Education Law §11(6), 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;

(c) standards and procedures to assure the security and safety of all students and school personnel;

(d) . . .

(e) . . .

(f) disciplinary measures to be taken in incidents on school property or at school functions involving the possession or use of illegal substances or weapons, the use of physical force, vandalism, violation of another student's civil rights[, harassment,] and threats of violence;

(g) disciplinary measures to be taken for incidents on school property or at school functions involving harassment, bullying and/or discrimination;

[(g)] (h) provisions for responding to acts of [discrimination, and] harassment, bullying, and/or discrimination against students by employees or students pursuant to clause (b) of this subparagraph which, with respect to such acts against students by students, incorporate a progressive model of student discipline that includes measured, balanced and age-appropriate remedies and procedures that make appropriate use of prevention, education, intervention and discipline, and considers among other things, the nature and severity of the offending student's behavior(s), the developmental age of the student, the previous disciplinary record of the student and other extenuating circumstances, and the impact the student's behaviors had on the individual(s) who was

physically injured and/or emotionally harmed. Responses shall be reasonably calculated to end the harassment, bullying, and/or discrimination, prevent recurrence, and eliminate the hostile environment. This progressive model of student discipline shall be consistent with the other provisions of the code of conduct;

[(h)] (i) . . .

[(i)] (j) . . .

[(j)] (k) provisions ensuring that such code and the enforcement thereof are in compliance with State and Federal laws relating to students with disabilities;

[(k)] (l) provisions setting forth the procedures by which local law enforcement agencies shall be notified promptly of code violations, including but not limited to incidents of harassment, bullying, and/or discrimination, which may constitute a crime.

[(l)] (m) . . .

[(m)] (n) . . .

[(n)] (o) circumstances under and procedures by which referral to appropriate human service agencies shall be made, as needed;

[(o)] (p) . . .

[(p)] (q) . . .

[(q)] (r) a bill of rights and responsibilities of students which focuses upon positive student behavior and a safe and supportive school climate, which shall be written in plain-language, publicized and explained in an age-appropriate manner to all students on an annual basis; [and]

[(r)] (s) guidelines and programs for in-service education programs for all district staff members to ensure effective implementation of school policy on school conduct and discipline, including but not limited to, guidelines on promoting a safe and supportive school climate while discouraging, among other things, [discrimination or] harassment, bullying and discrimination against students by students and/or school employees; and including safe and supportive school climate concepts in the curriculum and classroom management; and

(t) a provision prohibiting retaliation against any individual who, in good faith, reports or assists in the investigation of harassment, bullying, and/or discrimination.

(iii) Additional responsibilities.

(a) . . .

(b) Each board of education and board of cooperative educational services shall ensure community awareness of its code of conduct by:

(1) . . .

(2) . . .

(3) [providing] mailing a plain language summary of the code of conduct to all persons in parental relation to students before the beginning of each school year and making such summary available thereafter upon request;

(4) providing each [existing] teacher with a copy of the complete code of conduct and a copy of any amendments to the code as soon as practicable following initial adoption or amendment of the code, and providing new teachers with a complete copy of the current code upon their employment; and

(5) . . .

2. Section 119.6 of the Regulations of the Commissioner of Education is amended, effective July 1, 2013, as follows:

§119.6 Policies against [discrimination and] harassment, bullying, and discrimination.

Each charter school shall include in its disciplinary rules and procedures pursuant to Education Law section 2851(2)(h) or, if applicable, in its code of conduct:

(a) provisions, in an age-appropriate version and written in plain-language, prohibiting [discrimination and] harassment, bullying, and/or discrimination 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] or by threats, intimidation or abuse, including cyberbullying as defined in Education Law section 11(8), [of such a severe nature] that either:

(1) 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, including conduct, threats, intimidation or abuse that reasonably causes or would reasonably be expected to cause emotional harm; or

(2) reasonably causes or would reasonably be expected to cause physical injury to a student or to cause a student to fear for his or her physical safety.

(3) Such conduct shall include acts of harassment and/or bullying that occur:

(i) on school property, as defined in section 100.2(kk)(1)(i) of this Part; and/or

(ii) at a school function, as defined in section 100.2(kk)(1) of this Part; or

(iii) off school property where such acts create or would foreseeably create a risk of substantial disruption within the school environment, where it is foreseeable that the conduct, threats, intimidation or abuse might reach school property.

(4) For purposes of this section, the term “threats, intimidation or abuse” shall include verbal and non-verbal actions.

(5) For purposes of this section, "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.

(6) Such conduct shall include, but is not limited to [ , threats, intimidation, or abuse] acts based on a person’s actual or perceived race, color, weight, national origin, ethnic group, religion, religious practices, disability, sexual orientation, gender as defined in Education Law §11(6), 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;

(b) provisions for responding to acts of [discrimination and] harassment, bullying, and/or discrimination against students by employees or students on school property or at a school function as defined in Education Law sections 11(1) and (2), pursuant to subdivision (a) of this section, including but not limited to disciplinary measures to be taken;

(c) guidelines on promoting a safe and supportive school climate while discouraging, among other things, [discrimination or] harassment, bullying, and/or discrimination against students by students and/or school employees; and including

safe and supportive school climate concepts in the curriculum and classroom management.

(d) provisions which enable students, parents and persons in parental relation to make an oral or written report of harassment, bullying, and/or discrimination to teachers, administrators, and other school personnel that the school district deems appropriate;  
and

(e) a provision prohibiting retaliation against any individual who, in good faith, reports or assists in the investigation of harassment, bullying, and/or discrimination.