

AMENDMENT TO THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to sections 11, 12, 13, 14, 15, 101, 207, 305(1) and (2), and 2854(1)(b) of the Education Law and Chapter 95 of the Laws of 2019.

1. Subparagraph (x) of paragraph (1) of subdivision (kk) of section 100.2 of the Regulations of the Commissioner of Education is amended to read as follows:

(x) Race shall include traits historically associated with race, including, but not limited to, hair texture and protective hairstyles.

(xi) Protective hairstyles shall include, but not be limited to, such hairstyles as braids, locks, and twists.

(xi) For purposes of this section, a *report of harassment, bullying, and/or discrimination* means a written or oral report of harassment, bullying, and/or discrimination that could constitute a violation of the Dignity for All Students Act (article 2 of the Education Law). Such a report may include, but is not limited to, the following examples:

(a) a report regarding the denial of access to school facilities, functions, opportunities or programs including, but not limited to, restrooms, changing rooms, locker rooms, and/or field trips, based on a person's actual or perceived race, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender (which includes gender identity and/or expression), or sex; or

(b) a report regarding application of a dress code, specific grooming or appearance standards that is based on a person's actual or perceived race, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender (which includes gender identity and/or expression), or sex; or

(c) a report regarding the use of name(s) and pronoun(s) or the pronunciation of name(s) that is based on a person's actual or perceived race, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender (which includes gender identity and/or expression), or sex; or

(d) a report regarding the punishment, differential treatment or humiliation of a student, or exclusion of a student from a school function, athletic team or school yearbook, based on hair texture or protective hairstyle, or the request to alter or actual alteration of a protective hairstyle; or

(e) a report regarding any other form of harassment, bullying and/or discrimination, based on a person's actual or perceived race, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender (which includes gender identity and/or expression), or sex.

2. Paragraph (2) of subdivision (c) of section 100.2 of the Regulations of the Commissioner of Education is amended to read as follows:

(2) for all public school students, instruction that supports development of a school environment free of harassment, bullying, and/or discrimination as required by the Dignity For All Students Act (article 2 of the Education Law), with an emphasis on discouraging acts of harassment, bullying, and/or discrimination, including but not limited to instruction that raises students' awareness and sensitivity to harassment, bullying and/or discrimination based on a person's actual or perceived race as defined in Education Law section 11(9), color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender, or sex, and instruction in the safe, responsible use of the Internet and electronic communications; provided that in public schools other than

charter schools, such instruction shall be provided as part of a component on civility, citizenship and character education in accordance with section 801-a of the Education Law;

3. Subdivision (k) of section 100.2 of the Regulations of the Commissioner of Education is amended to read as follows:

(k) *Nondiscrimination in curricular and extracurricular activities.* No student shall be denied membership or participation, on the basis of race as defined in Education Law section 11(9) and subdivision (kk) of this section, sex, marital status, color, religion, national origin or disability, in any program or activity which is included in a school program of curricular or extracurricular activities, provided that:

(1) ...;

(2) ...;

(3) ...; and

(4)

4. Subclause (6) of clause (b) of subparagraph (ii) of paragraph (2) of subdivision I of section 100.2 of the Regulations of the Commissioner of Education is amended to read as follows:

(6) Such conduct shall include, but is not limited to acts based on a person's actual or perceived race as defined in Education Law section 11(9) and subdivision (kk) of this section, color, weight, national origin, ethnic group, religion, religious practices, disability, sexual orientation, gender as defined in Education Law Section 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;

5. Clause (d) of subparagraph (vi) of clause (1) of subdivision (gg) of section 100.2 of the Regulations of the Commissioner of Education is amended to read as follows:

(d) Material incident of harassment, bullying, and/or discrimination. A single verified incident or a series of related verified incidents where a student is subjected to harassment, bullying and/or discrimination by a student and/or employee on school property or at a school function. In addition, such term shall include a verified incident or series of related incidents of harassment or bullying that occur off school property, as defined in subparagraph (kk)(1)(viii) of this section, such conduct shall include, but is not limited to, threats, intimidation or abuse based on a person's actual or perceived race as defined in Education Law section 11(9) and subdivision (kk) of this section, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender, 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.

6. Subparagraph (vii) of paragraph (1) of subdivision (j) of section 100.2 of the Regulations of the Commissioner of Education is amended to read as follows:

(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 as defined in Education Law section 11(9) and subdivision (kk) of this section, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender or sex.

7. Clause (d) of subparagraph (viii) of paragraph (1) of subdivision (j) of section 100.2 of the Regulations of the Commissioner of Education is amended to read as follows:

(d) For purposes of this subdivision, the term threats, intimidation or abuse shall include verbal and non-verbal actions. Acts of harassment or bullying shall include, but not be limited to, acts based on a person's actual or perceived race as defined in Education Law section 11(9) and subdivision (kk) of this section, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender, or sex.

8. Subparagraph (i) of paragraph (3) of subdivision (j) of section 100.2 of the Regulations of the Commissioner of Education is amended to read as follows:

(i) raise awareness and sensitivity to potential acts of harassment, bullying, and/or discrimination directed at students that are committed by students and/or school employees on school property or at a school function, or off school property pursuant to subclause (1)(viii)(c)(3) of this subdivision; including, but not limited to, harassment, bullying and/or discrimination based on a person's actual or perceived race as defined in Education Law section 11(9) and subdivision (kk) of this section, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender, or

sex. Such training shall address the social patterns of harassment, bullying and/or discrimination, the identification and mitigation of such acts, and strategies for effectively addressing problems of exclusion, bias and aggression in educational settings;

9. Subparagraph (iii) of paragraph (4) of subdivision (jj) of section 100.2 of the Regulations of the Commissioner is amended to read as follows:

(iii) provided with training which addresses the social patterns of harassment, bullying and discrimination, including but not limited to those acts based on a person's actual or perceived race as defined in Education Law section 11(9) and subdivision (kk) of this section, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender, and sex;

10. Paragraph (6) of subdivision (a) of section 119.6 of the Commissioner's Regulations is amended to read as follows:

(6) Such conduct shall include, but is not limited to acts based on a person's actual or perceived race as defined in Education Law section 11(9) and subdivision (kk) of section 100.2 of this Subtitle, color, weight, national origin, ethnic group, religion, religious practices, disability, sexual orientation, gender as defined in Education Law section 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 section 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;