



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

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

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## **Sample Local Policy Guideline**

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## **SAMPLE LOCAL POLICY GUIDELINE**

### **INTRODUCTION**

With the enactment of the Dignity for All Students Act (Dignity Act), signed into law by Governor Paterson on September 8, 2010, and the U.S. Department of Education (USDE) Office for Civil Rights' (OCR) issuance of the Dear Colleague Letter regarding harassment and bullying (October 26, 2010)<sup>1</sup>, the following sample local policy guideline was developed to assist school districts (districts), boards of cooperative educational services (BOCES), and charter schools in the implementation of the Dignity Act.

This Dignity Act sample local policy guideline is intended as a **voluntary** tool to assist districts, BOCES, and charter schools in their implementation efforts. However, it is not intended to cover every possible action or best practice in which they might engage as part of such efforts. Nor is it intended to cover every possible best practice in which districts, BOCES, and charter schools might engage as part of their efforts to build and/or maintain a safe and supportive school climate and culture. Thus, districts, BOCES, and charter schools are advised to consult with their attorneys regarding the implementation of the Dignity Act.

Since the Dignity Act becomes effective on July 1, 2012, it is recommended that districts, BOCES, and charter schools begin their implementation planning so that their Dignity Act implementation processes can occur in a timely manner. In addition, districts, BOCES, and charter schools should take the opportunity to review how civil rights protections and complaint procedures fit in with their respective policies and procedures, and with their discrimination, harassment, and bullying prevention and/or intervention programs.

This sample local policy guideline was developed with input from the Dignity Act Task Force. The Dignity Act Task Force's discussions regarding, among other things, the issues related to protecting students who feel unsafe in school, as well as the content of professional development, have been incorporated into this document.

Please 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). Nor does the Dignity Act alter the requirement of adopting and publishing a nondiscrimination policy. For guidance on developing a nondiscrimination policy, please visit the OCR website at: <http://www2.ed.gov/about/offices/list/ocr/poloverview.html>

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<sup>1</sup> [www2.ed.gov/about/offices/list/ocr/letters/colleague-201010.html](http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201010.html)

The board of education of the district (board) (or the Chancellor of the City School District of the City of New York [Chancellor]) or the board of trustees of the charter school (board of trustees) (hereinafter the term “board” will be used to refer to boards of education, the Chancellor, and boards of trustees) is committed to providing an educational environment that promotes respect, dignity, and equality. The board recognizes that acts of discrimination and harassment, including bullying, taunting, or intimidation, are detrimental to student learning and achievement. These behaviors interfere with the mission of the district (or BOCES or charter school) to educate its students and disrupt the operation of its schools. Such behavior affects not only the students who are its targets, but also those individuals who participate in, and witness such acts.

To this end, the board condemns and strictly prohibits all forms of discrimination and harassment, including bullying, taunting or intimidation, against students by students and/or employees on school property, which includes (among other things) school buses, and at school functions, which means school-sponsored, extra-curricular events or activities.

*NOTE: The Dignity Act prohibits discrimination and/or harassment of students on school property and at school functions by students and/or employees. However, harassment can include, among other things, the use, both on and off school property, of information technology, including, but not limited to, email, instant messaging, blogs, chat rooms, pagers, cell phones, gaming systems and social media websites, to deliberately harass or threaten others. This type of harassment is generally referred to as cyberbullying.*

*Although the Dignity Act does not specifically address cyberbullying, it is considered a form of harassment, like bullying.*

*While the Dignity Act applies to the above-referenced conduct on school property or at a school function, it should be noted that districts, BOCES, and charter schools may discipline students for off-school-property/off-school-campus conduct under certain circumstances.*

*In addition, since regulation of harassment in the forms of bullying, cyberbullying, and/or sexting can involve free speech and expression; constitutional issues arise regarding the ability of a district, BOCES, or charter school to restrict these forms of speech and expression and to discipline students for engaging in them.*

*Thus, districts, BOCES, and charter schools should be mindful of the aforementioned facts and issues when developing their respective policies. Moreover, since this area of law continues to evolve, the New York State Education Department (NYSED) recommends that districts, BOCES, and charter schools consult with their attorneys in developing policies – and periodically review their existing policies – on bullying, cyberbullying, and/or sexting, as well as the disciplining of students for off-school property/off-campus conduct, to determine whether the existing or proposed policies are consistent with state and/or federal statutes and/or regulations, case law, and Commissioner’s decisions.*

*For further information regarding these issues, please refer to the following:*

*NYSED's Guidance on Bullying and Cyberbullying, which can be found at:*

*[http://www.p12.nysed.gov/technology/internet\\_safety/documents/cyberbullying.html](http://www.p12.nysed.gov/technology/internet_safety/documents/cyberbullying.html)*

*NYSED's Dignity for All Students Act Guidance for Updating Codes of Conduct, which can be found at:*

*<http://www.p12.nysed.gov/dignityact/documents/DASACodeofConductFinal44-1.pdf>*

*Districts, BOCES, and charter schools, in consultation with their attorneys, might also want to consider non-punitive options when addressing problematic off-school property/off-school campus behavior. Moreover, districts, BOCES, and charter schools should not fail to prevent and/or address in-school harassment simply because the students involved are also experiencing harassment outside of school.*

## **DEFINITIONS**

### **Harassment**

Harassment has been defined in various ways in state and federal law and regulation. The Board recognizes that these definitions are important standards and it will develop its policy to comply with them. It is also the Board's goal, in developing its policy, to prevent incidents of misbehavior from occurring and/or escalating, to promote a positive school environment, and to limit liability.

The Dignity Act (Education Law §11[7]) defines harassment as the creation of a hostile environment by conduct or by verbal threats, intimidation or abuse that 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 conduct, verbal threats, intimidation or abuse that reasonably causes or would reasonably be expected to cause a student to fear for his or her physical safety. Such conduct, verbal threats, intimidation or abuse, includes, but is not limited to conduct, verbal threats, intimidation or abuse based on a person's actual or perceived:

- race
- color
- weight
- national origin
- ethnic group
- religion
- religious practice
- disability
- sex
- sexual orientation
- gender (which includes a person's actual or perceived sex, as well as gender identity and expression).

In addition to the Dignity Act requirements, districts and BOCES should consult with their attorneys to ensure that their policies comply with federal civil rights laws and regulations enforced by USDE's 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 intent of 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 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/or federal law and regulatory requirements regarding discrimination and harassment.

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 Letter regarding harassment and bullying (October 26, 2010), which can be found at: [www2.ed.gov/about/offices/list/ocr/letters/colleague201010.html](http://www2.ed.gov/about/offices/list/ocr/letters/colleague201010.html).

## **Bullying**

Bullying has been described by the USDE as unwanted, aggressive behavior among school-aged children 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 places like a playground or bus, while a child is traveling to or from school or on the Internet. Children who are bullied and those who bully others could have serious, lasting problems. Additionally, according to the USDE, bullying generally involves the following characteristics:

- An Imbalance of Power: Children who bully 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: The person bullying has a goal of causing harm.
- 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 children not to be friends with someone, and embarrassing someone in public.
- Physical: Hitting, punching, shoving, kicking, pinching, spitting, tripping, pushing, taking or breaking someone's things, and making mean or rude hand gestures.

<http://www.stopbullying.gov/what-is-bullying/definition/index.html>

## **Hazing**

The Penal Law defines hazing as a person intentionally or recklessly engaging in conduct during the course of another person's initiation into or affiliation with any organization, which creates a substantial risk of physical injury to such other person or a third person and thereby causes such injury (Penal Law §120.16).

Under the Penal Law, it is also considered hazing, even when physical injury does not occur, if a person intentionally or recklessly engaged in conduct during the course of another person's initiation into or affiliation with any organization, which created a substantial risk of physical injury to such other person or a third person (Penal Law §120.17).

## Discrimination

Discrimination is not specifically defined in the Dignity Act. However, for reference purposes, it should be noted that Education Law §§3201 and 3201-a prohibit discrimination in the form of denial of admission into or exclusion from any public school on the basis of race, creed, color, national origin, or and gender.

*NOTE: As stated above, the Dignity Act does not alter existing anti-discrimination obligations under federal civil rights law, including the requirement of adopting and publishing a nondiscrimination policy. However, since the Dignity Act expands nondiscrimination protections for students in public schools under New York State law, districts, BOCES and charter schools, in consultation with their attorneys, should review their current nondiscrimination policies to determine which provisions need to be updated in order to comply with the Dignity Act's requirements. Most districts, BOCES and charter schools will need to update their nondiscrimination policies to include the additional categories protected by the Dignity Act, as enumerated in the Definitions section above. However, it should be noted that these Dignity Act protected categories are non-exclusive and that the Dignity Act prohibits the discrimination and/or harassment of all students by students and/or employees on school property or at a school function.*

## Prevention

The school setting provides an opportunity to teach children, and emphasize among staff, that cooperation with and respect for others is a key value of all districts, BOCES, and charter schools. A program geared to prevention is designed to not only decrease incidents of discrimination, harassment, bullying, taunting or intimidation, 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 will be sensitized, through district-wide, BOCES-wide, or charter school-wide professional development and instruction, to the warning signs of discrimination, harassment, bullying, taunting or intimidation, 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,”<sup>2</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).

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<sup>2</sup> 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]) .

- Learning about and identifying the early warning signs and precursor behaviors that can lead to discrimination, harassment, bullying, taunting or intimidation.
- Gathering information about discrimination, harassment, bullying, taunting or intimidation on school property or at school functions 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 and classroom rules about discrimination, harassment, bullying, taunting or intimidation 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.
- Training adults in the school community to respond sensitively and consistently to discrimination, harassment, bullying, taunting or intimidation.
- 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 expression, and sex; social stigma in the school environment, gender norms in the school environment, and strategies for preventing and responding to discrimination, harassment, bullying, taunting or intimidation and/or other forms of anti-social and/or violent behavior.
- Providing adequate supervision, particularly in less structured areas, including, but not limited to, hallways, cafeterias, school buses and playgrounds.
- Raising parental awareness and involvement in discrimination, harassment, bullying, taunting or intimidation 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), to address the underlying causes and effects of discrimination, harassment, bullying, taunting or intimidation.

*NOTE: In the paragraph below, the policy creates a voluntary district-wide, BOCES-wide, or charter school-wide committee. It is recommended that the creation of such a committee consists of various constituencies. The Board can 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 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 Superintendent may opt to voluntarily create a district-wide Committee or Task Force on Discrimination, Harassment and Bullying Prevention and Intervention, as well as voluntary Discrimination, Harassment and Bullying Prevention and Intervention Coordinating Committees in each school. Committees may choose to include representatives from staff, administration, students, and/or parents. The district-wide, BOCES-wide, or charter school-wide task force and the school-level committee may voluntarily assist the administration in developing and implementing specific procedures on early identification of discrimination, harassment and bullying, as well as taunting or intimidation, and other preventative strategies. In addition, the program can opt to include reporting, investigating, remedying and tracking allegations of discrimination, harassment and bullying, as well as taunting or intimidation.

## **Intervention**

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

Remedial responses to discrimination or harassment, including bullying, taunting, or intimidation, could be associated with staff intervention. This might include measures designed to correct the problem behavior, prevent another occurrence of the problem behavior, and protect the targeted student. Remediation can be targeted to the individual(s) involved in the aforementioned behavioral approaches, which are targeted to the school or district or BOCES or charter school as a whole.

In addition, intervention will focus upon the safety of the targeted student. When aware of incidents of discrimination, harassment or bullying, as well as intimidation or taunting, staff are expected either to refer the targeted student to designated resources for assistance, or to 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 discrimination, harassment, bullying, taunting or intimidation 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 or other appropriate or designated staff. The building principal, other appropriate or designated staff, the student and the student's parent/guardian will 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 will be handled individually, and the student, parent/guardian, and school administration will collaborate to establish safety provisions that best meet the needs of the targeted 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 changed or discontinued.

## **Training**

The Board recognizes that professional development is needed in order to implement an effective discrimination, harassment, and bullying prevention and intervention program. The Superintendent and the District Professional Development Team will incorporate training to support this program in new teacher orientation and the annual professional development plan, as needed. Training opportunities will be provided for all staff, including, but not limited to, bus drivers, cafeteria staff and hall monitors, and all staff who have contact with students.

In compliance with Education Law §13(3), at least one 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).

*NOTE: Section 100.2(jj) of the Commissioner's Regulations holds that on or before July 1, 2012, each school district and each charter school shall establish guidelines for its school or schools to implement, commencing with the 2012-2013 school year and continuing in each school year thereafter, Dignity for All Students school employee training programs to promote a positive school environment that is free from discrimination and harassment; and to discourage and respond to incidents of discrimination and/or harassment on school property or at school functions. Such 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.*

*A Notice of Emergency Adoption and Revised Rule Making [for 100.2(jj)] was published in the State Register on June 6th. Public comment must be received by July 6th. The effective date for 100.2(jj) was May 22, 2012.*

## **Reporting and Investigation**

Students who have been subjected to discrimination or harassment, parents whose children have been subjected to such behavior, or other students or staff who observe such behavior, are encouraged and expected to make verbal and/or written complaints to the appropriate 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. At all times, complaints will be documented, tracked and handled 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 or her supervisor.

*NOTE: NYSED has proposed the addition of section 100.2(kk) of the Commissioner's Regulations for the Board of Regents' consideration, which defines what a material incident of discrimination and harassment for Dignity Act reporting purposes and to implement the reporting requirements of the Dignity Act. If the proposed regulations are adopted, it is recommended that their requirements be incorporated into this policy. It is anticipated that the proposed rule will be presented for action at the June Regents meeting. In addition to adopting the regulation on a permanent basis at the June Regents meeting (with a July 3, 2012 effective date), an emergency action will also be necessary at that time to ensure that the proposed rule takes effect on July 1, 2012.*

There shall be a duty for all school personnel to report incidents of student-to-student and/or staff-to-student discrimination, harassment and bullying that they observe on school property or at school functions to their building principal or other administrator who supervises their employment. In addition, there shall be a further duty for all school personnel to report any incidents of student-to-student and/or staff-to-student discrimination, harassment and bullying of which they are made aware by students, staff, or persons in parental relation to their building principals or other administrator who supervises their employment. Supervisors may chose to refer the information to appropriate staff, which may include, among others, the DAC, for investigation as designated in the policy and/or code of conduct, or in the case of a charter school, its disciplinary rules and procedures, or, if applicable, in its code of conduct.

The results of any such investigation shall be reported to both the targeted student and the alleged offender, as well as their respective parents or guardians, 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 parents or guardians disagrees with the results of the investigation, that party should be advised of any local policies regarding how to proceed in such instances.

## **Student Disciplinary Consequences/Remediation**

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

This policy is meant to promote progressive discipline and intervention, as opposed to a "zero tolerance" approach. Responses to students' violations of the policy shall be age-appropriate and include both consequences and appropriate remedial responses to a student who commits one or more acts of discrimination, harassment and/or bullying. Consequences for a student who commits an act or acts of discrimination, harassment and/or bullying shall be unique to the individual incident and will vary in method and severity according to the nature of the behavior, the developmental age of the student, the student's history of problem behaviors, 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, in its code of conduct.

## **Investigating and Responding to Allegations of Staff-to-Student Harassment and/or Discrimination**

In the case of a report of alleged staff-to-student harassment and/or discrimination, 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 discrimination or harassment by a student and/or an employee, on school grounds or at school functions, 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**

Pursuant to Section 100.2(l)(b)(1) of Commissioner's Regulations, each school district, BOCES, and charter school must post their complete code of conduct and any updates on their website, if available, and must provide copies of a summary of the code written in plain language in an age-appropriate version to all students at an assembly at the beginning of each school year. Schools must also provide a plain language summary to all parents and guardians of students at the beginning of each school year. All teachers must also receive a complete copy of the Code of Conduct. Copies of the Code of Conduct must also be made available for review by other school staff and community members. Schools may voluntarily opt to develop a local complaint form to assist in the reporting of material incidents of discrimination, harassment, and bullying.

Each year, as a part of the required annual review of the code of conduct,<sup>3</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, the Board will receive the annual VADIR report, as well as other relevant data, for each school and for the district as whole, with particular attention to the trends in incidents of discrimination, harassment and bullying. 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 should 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 and code of conduct or disciplinary rules and procedures cross-references

Adoption date:

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<sup>3</sup> See Education Law §2801(5) and 8 NYCRR §100.2(l)(2)(iii)(a).