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New York State
EDUCATION DEPARTMENT
Knowledge › Skill › Opportunity

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Commissioner of Education
President of the University of the State of New York

August 9, 2023

Dear Colleagues,

The New York State Office of the Attorney General ("OAG") and the New York State Board of Regents ("Board" or "SED") write to inform Local Education Agencies ("LEAs") of their obligation to place dignity, inclusion, and respect at the center of their educational decisions. These principles, embedded in law, are the wellspring from which sound decisions of educational policy flow. Through this joint guidance, the OAG and SED reaffirm New York's commitment to ensuring that all students have full educational opportunity by supporting LEAs' development and implementation of policies and practices that advance the principles of diversity, equity, and inclusion ("DEI").

State and federal laws prohibit discrimination in covered educational institutions on the basis of race, color, national origin, disability, sex, religion, sexual orientation, gender identity or expression, military status, age, or marital status.[1] Many of these laws require LEAs to take affirmative steps to identify and remedy such instances of discrimination and their harmful

[1] 42 U.S.C. § 2000d (prohibiting discrimination on the basis of race, color, or national origin in programs receiving federal funding); 20 U.S.C. § 1681(a) (prohibiting discrimination on the basis of sex in education programs receiving federal funding); N.Y. Exec. Law § 296(4) (2022) (prohibiting discrimination on the basis of "race, color, religion, disability, national origin, citizenship or immigration status, sexual orientation, gender identity or expression, military status, sex, age, marital status, or status as a victim of domestic violence …" in "educational institutions"); *see also* N.Y. Educ. Law § 12(1) (2022) (prohibiting bullying, harassment, and discrimination of a student on the basis of "actual or perceived race, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender, or sex"); 42 U.S.C. § 11431 ("Each State educational agency shall ensure that each child of a homeless individual and each homeless youth has equal access to the same free, appropriate public education."); 42 U.S.C. § 12131 *et seq.* (prohibiting discrimination on the basis of disability in public services, including public education); 42 U.S.C. § 12181–82 (prohibiting discrimination on the basis of disability in places of public accommodation, defined to include places of education); 29 U.S.C. § 794(a) (prohibiting discrimination on the basis of disability in programs receiving federal funding); *see also Wilson v. Phoenix House*, 978 N.Y.S.2d at 750 (Sup. Ct. 2013) (holding that gender dysphoria, a disability many transgender people have, is a disability that must be accommodated under New York law, and that a reasonable accommodation for a transgender woman is being "entitled to experience living as" a female); *Doe v. Bell*, 754 N.Y.S.2d 846, 851 (Sup. Ct. 2003); N.Y. Civ. Rights § 40-c(2) (defining disability as consistent with the New York State Human Rights Law).

effects on educational opportunity for all students.[2] Failure to evaluate, monitor, and revise as appropriate, policies, procedures, and curricular choices may violate an LEA's obligations under federal and state law.

Two state policies—the Dignity for All Students Act ("Dignity Act") and the Board of Regents' DEI policy—deserve special attention. The Dignity Act took effect on July 1, 2012 and requires that public schools "foster civility in public schools" by creating a school environment where students are free to learn without fear of discrimination, harassment, or intimidation.[3] It also amended Section 801-a of New York State Education Law regarding instruction in civility, citizenship, and character education by expanding the concepts of tolerance, respect for others, and dignity. This includes an awareness and sensitivity in the relations of people, including different races, weights, national origins, ethnic groups, religions, religious practices, mental or physical abilities, sexual orientations, gender identities, and sexes. The Dignity Act was amended in 2021 to include that discrimination based on race includes discrimination based on hairstyles and traits associated with race.

In May 2021, the Board adopted a robust DEI policy.[4] This followed the publication of a DEI framework, in which the Board stated that it "is important for the Board . . . to establish and communicate to all New Yorkers its beliefs and expectations for all students—especially at pivotal moments in history."[5] In its policy, the Board adopted definitions of "diversity," "equity," and "inclusion" developed by the University of California, Berkley Center for Equity, Inclusion and Diversity and the University of Houston's Center for Diversity and Inclusion.[6] The Board also articulated its expectation "that all school districts and institutions of higher education [would] develop and implement policies and practices that advance diversity, equity, and inclusion ['DEI']—and that they will implement such policies and practices with fidelity and urgency."[7]

Public schools cannot meet their legal obligations unless they place DEI at the center of their work. Three crucial examples are identified below: (1) teaching and learning; (2) student discipline; and (3) addressing bullying and harassment.

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[2] *E.g.* Renee L. Rider & Lourdes M. Rosado, Dignity for All Students Act: Results of Statewide School District Survey and Guidance on Implementation 12-13 (2016), https://ag.ny.gov/sites/default/files/dasa_-_dear_colleague_letter_oag-sed_guidance_document.pdf (hereinafter "DASA 2016 Guidance") (explaining that the Dignity for All Students Act requires public schools to promptly respond to witnessed or reported harassment, bullying, or discrimination with a written report, thorough investigation, and prompt action to end the harassment, bullying, and discrimination).

[3] N.Y. Educ. Law § 11.

[4] Letter to the Honorable Members of the Board of Regents from Chancellor Lester W. Young, Jr. Re: The New York State Board of Regents Policy Statement on Diversity, Equity, and Inclusion in New York State Schools (May 6, 2021), https://www.regents.nysed.gov/common/regents/files/521bra7.pdf at 1.

[5] *See* Letter to the Honorable Members of the Board of Regents from Chancellor Lester W. Young, Jr. Re: The NYS Board of Regents Framework on Diversity, Equity, and Inclusion in New York's Schools: A Call to Action – DRAFT (Apr. 12, 2021), https://www.regents.nysed.gov/common/regents/files/421brd1.pdf, at 1, 3-4.

[6] *Id.* at 6-7.

[7] *Id.*

(1) Ensure teaching and learning reflect principles of diversity, equity, and inclusion and provide opportunities for all students to make educational progress.

The Board of Regents is committed to students in New York receiving the best instruction possible. As explained in the Board's policy statement, LEAs should "[a]ddress the need for *inclusive and culturally responsive teaching and learning*, including but not limited to curricula in all content areas; books and instructional materials; pedagogical practices and professional development; classroom grouping policies and practices; student support systems for all developmental pathways; full and equitable opportunities to learn for all students; and multiple assessment measures."[8] Such teaching and learning should, among other things, avoid the "danger of a single story," and "create opportunities for all students to learn from multiple perspectives."[9] It should be up-to-date, accurate, and reflect the diverse groups that have contributed to the intellectual discourse. Incorporating diverse perspectives builds a safe and nurturing school community and improves academic achievement for all students—a central goal of education in New York State.

Teaching curricula that accurately portray and analyze historical information in a culturally appropriate manner is lawful and encouraged. Conversely, failure to evaluate, monitor, and update teaching and learning policies, including with respect to the appropriateness of curricular choices in the classroom[10] and student grouping across classrooms and schools, may violate state and federal law.[11] The OAG and SED further note that LEAs cannot abdicate their legal responsibilities in this area, even if requested to do so by some community members. Accordingly, school districts cannot respond to local electorates or stakeholders by banning curricular materials that accurately portray and critically analyze topics related to protected classes such as race, national origin, gender (including gender identity and expression), or sexual orientation.

SED also reminds colleagues of the Boards' Culturally Responsive-Sustaining (CR-S) education framework, which "help[s] education stakeholders create student-centered learning

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[8] SED Board DEI Policy, at 2 (emphasis added).

[9] SED Framework, at 3-4.

[10] *E.g.*, Letter Agreement between OAG and Superintendent, Watertown City School District (July 31, 2020) (resolving concerns in an investigation relating to an incident involving a reenactment of a slave auction conducted in a fourth-grade classroom in one of the District's schools with respect to Title VI, the Equal Educational Opportunities Act, and the Dignity Act); Assurance of Discontinuance In the Matter of: The Investigation by Letitia James, Attorney General of the State of New York of The Chapel School (May 16, 2019) (resolving concerns in an investigation relating to whether the school's policies, curriculum, oversight of teachers, and practices for student enrollment and staff and faculty hiring discriminated against students on the basis of race, and/or created a hostile environment for students of color at the school).

[11] *Cf.* Dep't of Educ. & Dep't of Just., Nondiscriminatory Administration of School Discipline (2014), https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201401-title-vi.html (stating that a district-wide alternative high school program, where 90 percent of students assigned involuntarily are Black, despite Black students making up only 12 percent of the district's total students, could be basis for Title VI violation). Additionally, race-based disparities in enrollment in Advanced Placement and other high-level courses may violate Title VI. *Cf.* Letter from Arthur Zeidman, Dir., S.F. Off., Off. of C.R., to Steven Ladd, Superintendent, Elk Grove Unified Sch. Dist., at 1 (July 24, 2014) (determining that a school district's policy for enrolling students in AP courses had an unlawful disparate impact).

environments that affirm cultural identities; foster positive academic outcomes; develop students' abilities to connect across lines of difference; elevate historically marginalized voices; empower students as agents of social change; and contribute to individual student engagement, learning, growth, and achievement through the cultivation of critical thinking."[12] The framework provides guidelines for education stakeholders, including students, teachers, school leaders, district leaders, and family and community members related to equity and inclusion. For example, the framework provides that district leaders should "[a]dopt curriculum that highlights contributions and includes texts reflective of the diverse identities of students and reframes the monocultural framework that privileges the historically advantaged at the expense of other groups."[13] SED and OAG encourage districts to revisit the framework, and ensure that staff and educators are using it to continuously evaluate, monitor, revise, and improve their policies, procedures, and curricular choices to ensure diversity, equity, and inclusion.

(2) Address punitive student disciplinary policies and practices that result in disproportionality.

The U.S. Department of Education has stated, "[s]tudent discipline disproportionately involves students of color, particularly Black students, and students with disabilities." It "begin[s] as early as preschool," and is "widespread and persistent."[14] Such disproportionality violates state and federal laws, which require that discipline policies and practices be designed and implemented in a non-discriminatory way to ensure that all students have equal educational opportunity.[15]

New York State remains committed to minimizing punitive suspension practices and instead using restorative practices to keep students in the classroom, because the damage suspensions cause to student achievement is lasting.[16] Previous guidance from OAG and SED "urge[d] all districts to fully evaluate whether they over-rely on exclusion as a form of discipline." This guidance cautioned that "[o]ver-reliance on exclusionary discipline and disparities in its use leave school districts in New York vulnerable to liability under a host of

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[12] New York State Educ. Dep't, Culturally Responsive-Sustaining Framework (2018), http://www.nysed.gov/common/nysed/files/programs/crs/culturally-responsive-sustaining-education-framework.pdf.
[13] *Id.*
[14] U.S. Dep't of Educ., "School Climate and Student Discipline Resources: Know the Data," https://www2.ed.gov/policy/gen/guid/school-discipline/data.html (last accessed Jul. 23, 2022).
[15] *See* 42 U.S.C. § 2000d (2021) (prohibiting discrimination on the basis of race, color, or national origin in programs receiving federal funding); U.S. Dep't of Educ., Off. of Civ. Rts., Letter to Christina School District re: Case No. 03-10-5001 (Dec. 14, 2012); *see also* N.Y. Exec. Law § 296(4) (2022).
[16] New York State Office of Student Support Services, *Safe Schools Task Force Report: Recommendations for Reducing Disparities in and Reforming School Discipline in New York State*, Dec. 2022, 1-71, https://www.regents.nysed.gov/common/regents/files/P-12%20-%20Recommendations%20for%20ATT%20-%20Recommendations%20for%20Reducing%20Disparities%20in%20and%20Reforming%20School%20Discipline%20in%20New%20York%20State.pdf (noting that suspensions led to an increase likelihood of dropping out, reduced likelihood of post-secondary enrollment, increase likelihood of involvement in the juvenile justice system, and increase likelihood of future behavioral incidents (page 10-11). Further, the same report indicated many valuable peer-reviewed research on school disipline practices and policies for educators on pages 48-52.

federal and state laws ...[.]"[17] Additionally, New York State's approved plan under the federal Every Student Succeeds Act ("ESSA") articulates goals for school districts that include "reduc[ing] the overuse of punitive and exclusionary responses to student misbehavior." And both the Board (by resolution) and Commissioner of Education (by decisions under section 310 of the Education Law) have committed to "reducing dependence on exclusionary school discipline."[18]

The research-based findings the Board cites in its 2019 resolution remain relevant and pressing:

- Racial disparities in student discipline rates persist in New York State and the nation;
- Students with disabilities and lesbian, gay, bisexual, transgender (including gender expansive or nonbinary), and questioning (LGBTQ+) students are also at higher risk for suspension and expulsion;
- Suspension can be the first step in a series of events leading to lower student academic achievement, higher truancy rates, higher dropout rates, and higher rates of contact with the juvenile and adult justice systems;
- The use of exclusionary discipline (i.e., removing students from their learning environment) adversely impacts school climate overall, fails to make students feel safer, and can have a negative effect on other students' academic performance and achievement;
- The quality of the school climate is one of the most critical predictive factors in any school's capacity to promote student achievement; and
- Exclusionary school discipline does not effectively manage student behavior and the American Psychological Association has concluded that "zero-tolerance policies" fail to make schools safer.

SED's Office of Student Support Services affirmed these findings and recognized that punitive approaches to addressing student behavior are not just ineffective but harmful, especially for the youngest students. Moreover, the report made it clear that there must be further investments in training and preparation for restorative practices, changes to practice, code of conduct revisions, and better data collection and analysis to address persistent disproportionality in school suspensions and discipline.[19]

Schools are encouraged to expand efforts to train personnel to move away from systems that rely on punishment and exclusion and towards proactive and developmentally appropriate

[17] New York Office of the Attorney Gen. and New York Educ. Dep't, Joint Guidance (Aug. 29, 2019), https://www.p12.nysed.gov/sss/documents/oag-sed-joint-guidance-school-discipline.pdf (last accessed Aug. 4, 2022).
[18] New York State Board of Regents, Resolution (Jan. 14, 2019), https://www.regents.nysed.gov/common/regents/files/Resolution_0.pdf (last accessed Mar. 7, 2021); *Appeal of K.P.*, 61 Ed Dept Rep, Decision No. 18,055; *Appeal of N.V.D.*, 60 *id*., Decision No. 17,985).

[19] *Supra Safe Schools Task Force Report: Recommendations for Reducing Disparities in and Reforming School Discipline in New York State*, at 29.

alternatives that support youth, promote a positive school climate, and facilitate access to educational opportunities. Training should be evaluated on a regular an ongoing basis.[20]

Failure to address persistent disproportionalities in school discipline or evaluate the effect of school policies and procedures on students may run afoul of the law.[21]

For more information about these laws and information on restorative practices and alternatives to suspensions to keep students in school, see the joint SED and OAG guidance issued on school discipline dated August 29, 2019.[22]

(3) Ensure effective policies and procedures to prevent and address bullying and harassment in schools.

State, federal, and local laws protect students from bullying and harassment in schools and impose affirmative duties on LEAs to ensure that their schools are free from bullying and harassment. The Dignity Act provides that LEAs must "create policies, procedures and guidelines" that (1) "create a school environment that is free from harassment, bullying and discrimination;" (2) are "to be used in school training programs to discourage the development of harassment, bullying and discrimination;" (3) relate "to the development of nondiscriminatory instructional and counseling methods;" and (4) relate "to the development of measured, balanced and age-appropriate responses to instances of harassment, bullying or discrimination by students, with remedies and procedures following a progressive model . . . ."[23]

Harassment is defined as the creation of a hostile environment by conduct or by threats, intimidation, or abuse that has or would have the effect of (1) reasonably and substantially interfering with a student's educational performance, opportunities, or benefits or; (2) would reasonably be expected to cause a student to fear for his or her safety.[24] Under the Dignity Act, discrimination is any act by a student or school employee against a student based on a person's

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[20] *Id*. at 6.

[21] *E.g.* Dep't of Educ. & Dep't of Just., Nondiscriminatory Administration of School Discipline (2014), https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201401-title-vi.html (stating that a school district's discipline code providing for one-day suspension of all students who commit the offense of "acting in a threatening matter," with no clear definition of the prohibited conduct and disproportionate use of the provision to punish Black students over white students for comparable behavior, could violate Title VI); *id.* (stating that punishment by school officials exceeding district policy for "use of electronic device offenses," where investigation reveals Black students are engaging in the use of electronic devices at a higher rate than other students, could be the basis for a Title VI violation regardless of intent to discriminate); *id.* (stating that a middle school's "zero tolerance" policy for tardiness that disproportionately impacted Asian American students, who were more likely to live farther from the school and use public transit in the hypothetical scenario, could violate Title VI if evidence suggested a less adverse policy could be used to achieve the school's valid goals for the policy).

[22] New York State Office of the Attorney General, New York State Education Department, and the University of the State of New York, Guidance on School Discipline Policies (Aug. 29, 2019), https://www.p12.nysed.gov/sss/documents/oag-sed-joint-guidance-school-discipline.pdf

[23] N.Y. Educ. Law § 13 (Consol. 2022); *see also* Dignity Act 2016 Guidance ("DASA requires every school district 'to create policies, procedures and guidelines' that create a school environment free from harassment, bullying, and discrimination.").

[24] *See* N.Y. Educ. Law § 15; Regulations of the New York State Commissioner of Education ("Commissioner's Regulations") Part 100, 8 NYCRR § 100.2(jj)(viii).

actual or perceived race (including based on hair texture and protective hairstyles, such as but not limited to locs, twists, Bantu knots, or Afros), color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender (including gender identity and/or expression), or sex.[25] Gender is defined as "a person's actual or perceived sex and includes a person's gender identity or expression."[26] This definition and related information on how this definition is enforced is supplemented by Creating a Safe, Supportive, and Affirming School Environment for Transgender and Gender Expansive Students, 2023 Legal Update and Best Practice.[27] This guidance and its updates specifically address gender-segregated facilities, like bathrooms, locker rooms, and changing areas, and how to create a welcoming environment for transgender students. The guidance also addresses other topics that frequently arise in assuring a safe and supportive environment for transgender and nonbinary students, including (i) the use of names and pronouns to address transgender students, (ii) privacy, confidentiality, and student records, and (iii) other gender-based school policies and practices. We strongly encourage school districts to review SED's guidance and modify any outdated policies accordingly.

Under the New York State Human Rights Law, Exec. Law 296(4), it is an unlawful discriminatory practice for an educational institution, including a public school, to deny the use of its facilities to any person because of race, color, national origin, sex, or gender identity and expression,, among other protected bases.[28] Educational institutions should be careful to not

[25] Commissioner's Regulations Part 100, 8 NYCRR § 100.2(jj)(vii).
[26] N.Y. Educ. Law § 11(6) (defining gender to mean actual or perceived sex and shall include a person's gender identity or expression).). Additionally, New York State Education Law § 3201-a prohibits discrimination based on sex with respect to admission into or inclusion in courses of instruction and athletic teams in public schools except pursuant to regulations promulgated by the state commissioner of education; *see also* N.Y. Educ. Law § 10-18, 801-a, 2801.
[27] New York State Educ. Dep't Creating a Safe, Supportive, and Affirming School Environment for Transgender and Gender Expansive Students: 2023 Legal Update and Best Practices (June 2023), https://www.nysed.gov/sites/default/files/programs/student-support-services/creating-a-safe-supportive-and-affirming-school-environment-for-transgender-and-gender-expansive-students.pdf; *see also* New York State Educ. Dep't, Guidance to School Districts for Creating a Safe and Supportive School Environment For Transgender and Gender Nonconforming Students (July 2015), https://www.p12.nysed.gov/dignityact/documents/Transg_GNCGuidanceFINAL.pdf; New York State Education Department and New York State Attorney General, Letter to Schools from State Education Commissioner Elia and Attorney General Schneiderman Reminding Schools that New York State Protects Transgender Students (Feb. 2018), http://www.nysed.gov/common/nysed/files/nysed-oag-joint-guidance-letter-2-28-18.pdf. https://www.p12.nysed.gov/dignityact/documents/Transg_GNCGuidanceFINAL.pdf.
[28] Although claims under the NYSHRL previously were analyzed under the same standards applicable to Title VI, the NYSHRL provisions are now "construed liberally" to accomplish the remedial purposes of prohibition discrimination, and a 2019 amendment to the law clarified that it shall be construed, "liberally for the accomplishment of the remedial purposes thereof, regardless of whether federal civil rights laws including those laws with provisions worded comparably to the provisions of [the NYSHRL] have been so construed." New York State Human Rights Law, Exec. Law § 300. *See also*, *Bailey v. New York State Div. of Hum. Rts.*, 38 Misc. 3d 756, 959 N.Y.S.2d 833 (Sup. Ct. 2012); *see also*, U.S. Dep't of Educ., Letter from Suzanne B. Goldberg, (Apr. 6, 2021), https://www2.ed.gov/about/offices/list/ocr/correspondence/stakeholders/20210406-titleix-eo-14021.pdf.

create a hostile environment for students based on their race and gender.[29] The guidance issued by SED may be helpful to create a more welcoming environment.

Additionally, a school district that adopts a curriculum that excludes people and their histories or notable figures because of race, color, national origin, gender (including gender identity), and sexual orientation may violate the NYSHRL's and the Dignity Act's anti-discrimination provisions if the decision to adopt the exclusive curriculum was made on an impermissible basis, such as race or gender identity, or if the curriculum causes or contributes to race- or gender-based harassment.[30] Federal law also requires LEAs to have policies and procedures to prevent and address bullying and harassment on the basis of race, sex, and disability status.[31] LEAs that do not adhere to these requirements may face liability.

By way of example, LEAs may run afoul of the NYSHRL and the Dignity Act by:

- Banning books that highlight the diverse histories and perspectives of Black people;
- Using a pretext of inappropriateness or lewdness to systemically remove diverse perspectives from the classroom;
- Prohibiting discussions related to the concepts of slavery or ethnic supremacy, including literary or artistic works discussing such content;
- Prohibiting discussions related to disability and reasonable accommodations;
- Prohibiting discussions related to lesbian, gay, bisexual, transgender, nonbinary and gender expansive people, or diverse family structures and identities using a pretext of inappropriateness or obscenity;
- Prohibiting an LGBTQ+ support group or racial affinity support group from meeting or accessing school resources when other groups are permitted;
- Prohibiting a person from participating in a particular extracurricular program or using a particular facility because they do not conform to gender stereotypes;
- Preventing students with disabilities from interacting with their peers or other educational supports because they are "too much of a problem;"

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[29] *See* New York State Division on Human Rights, Guidance on Protections from Gender Identity Discrimination Under the New York State Human Rights Law (Jan. 29, 2020), https://www.nysed.gov/sites/default/files/programs/student-support-services/creating-a-safe-supportive-and-affirming-school-environment-for-transgender-and-gender-expansive-students.pdf.

[30] *See Zeno v. Pine Plains Cent. School Dist.*, 702 F.3d 655, 667 (2d Cir. 2014) (the absence of a "supportive, scholastic environment free of racism and harassment" may violate Title VI); *Hayut v. State University of New York*, 352 F.3d 733, 750 (2d Cir. 2003) (a student's "disparately hostile educational environment relative to" their peers could be construed as depriving that student of the benefits and educational opportunities available to them.).

[31] *See* 42 U.S.C. § 2000d (prohibiting discrimination on the basis of race, color, or national origin in programs receiving federal funding); 20 U.S.C. § 1681 (prohibiting discrimination on the basis of sex in education programs receiving federal funding); 42 U.S.C. § 12131 *et seq.* (prohibiting discrimination on the basis of disability in public services, including public education); 42 U.S.C. § 12181-82 (prohibiting discrimination on the basis of disability in places of public accommodation, defined to include places of education); 29 U.S.C. § 794(a) (prohibiting discrimination on the basis of disability in programs receiving federal funding).

- Prohibiting a transgender, gender expansive, or nonbinary person from using the single-gender extracurricular program or facility most closely aligned with their gender identity;
- Requiring a gender expansive or non-binary person to provide identification or proof of their gender in order to access the appropriate single-gender extracurricular program or facility;
- Barring a gender expansive student from a single-gender extracurricular program out of concern that they will make other students uncomfortable;
- Implementing a policy that prohibits twists, locs, braids, cornrows, Afros, Bantu knots, or fades or related policy indicating the hair style is a distraction; or
- Prohibiting a Black student athlete with locs from participating in a competition because the student's hair is below the student's shoulders but allowing white student-athletes with long hair to tie their hair up.

Failure to adequately address instances and patterns of harassment against students based on protected classes or a school environment that becomes hostile towards a protected class may violate state, federal, or local law.[32] Further, denying equal access to student groups that affirm student identities or address prejudice related to these identities may also violate federal law.[33] Teachers and other school staff who interact with students and affirm students' identities, including racial and ethnic identities, gender and gender expressions, and lesbian, gay, bisexual,

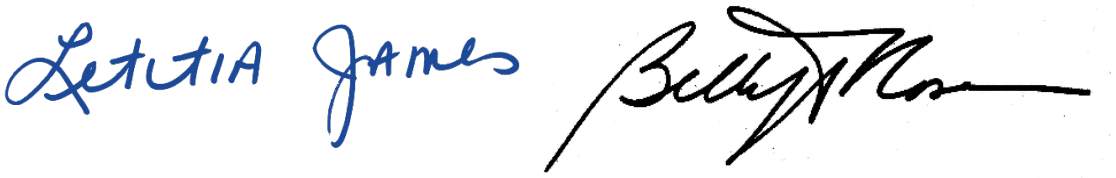
[32] *E.g.*, Assurance of Discontinuance at ¶¶ 17, 19, *In re* Middle County Central School District, Assurance No. 21-036 (N.Y. June 16, 2021) (finding that the Middle County Central School District was not in compliance with the N.Y. Dignity for All Students Act and Title IX where "the District failed to adequately investigate serious allegations of sexual harassment or abuse" and "declined to pursue further action" to address a student's continued bullying following a mediation agreement); U.S. Dep't of Educ., Off. of Civ. Rts., Harassment and Bullying, 4-5 (2010), https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201010.pdf (stating that a pattern of harassment toward Black students, resulting in students feeling unsafe and no response by school officials other than individual discipline would violate Title VI); *id.* at 5-6 (stating that a pattern of harassment toward Jewish students, resulting in students avoiding use of certain school facilities and no response by school officials other than individual discipline would violate Title VI); *id.* at 6–7 (stating that harassment of a female student by using sexually charged names, spreading rumors about her sexual behavior, and sending threatening messages, with insufficient action by school administrators would violate Title IX); *id.* at 7-8 (stating that harassment of a student using anti-gay slurs and sexual comments, resulting in the student dropping out of extracurricular activities and no response by school officials other than individual discipline would violate Title IX); *id.* at 9-10 (stating that physical and verbal harassment of a student with a learning disability, who consequently refused to attend school to avoid harassment, with no remedial action taken by school administrators would violate the ADA and the Rehabilitation Act); *id.* (stating that taunting of a student with Attention Deficit Hyperactivity Disorder ("ADHD") and a speech disability, resulting in the student becoming withdrawn and missing speech therapy would violate the ADA and the Rehabilitation Act); *see also* N.Y.C. Admin. Code § 8-107(4) (educational institutions are covered entity, classified as a pubic accommodation) and N.Y.C. Admin. Code § 8-104(2), defining an educational institution as: kindergartens, primary and secondary schools, academies, colleges, universities, professional schools, extension courses, and all other educational facilities.

[33] 20 U.S.C. § 4071(a) (it is unlawful for any public secondary school which received federal financial assistance, and which has a limited open forum to deny equal access or a fair opportunity to, or discriminate against, any student who wish to conduct a meeting within that limited open forum on the basis of the religious, political, philosophical, or other content of the speech at such meeting and related provisions).

transgender, queer, intersex, and asexual identities play an important role in fostering school belonging and helping students feel welcome.[34] If teachers or other school staff know of discrimination in their school or school district based on a protected class, they may report such discrimination to their supervisor or to agencies charged with remedying that discrimination. Reporters may receive protection from retaliation based on applicable law.[35]

For more information about the Dignity Act and recommendations regarding its compliance and implementation, see the joint memorandum from SED and the OAG dated August 31, 2016.[36] To ensure that children receive the equal access to education to which they are entitled, we encourage LEAs to reference the documents identified below under "Appendix A: Resources" for assistance, strategies, and best practices.

Sincerely,



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Commissioner of Education

[34] *See* New York State Dep't of Educ., Understanding the CROWN Act, http://www.nysed.gov/common/nysed/files/programs/student-support-services/understanding-crown-act.pdf (citing research of Craggs, H., & Kelly, C, *Adolescents' experiences of school belonging: a qualitative meta-synthesis*, 21(10) Journal of Youth Studies 1411-1425 (2018), https://doi.org/10.1080/13676261.2018.1477125 and Poteat, V. P., Sinclair, K. O., et al, *Gay-Straight Alliances Are Associated with Student Health: A Multischool Comparison of LGBTQ and Heterosexual Youth*, 23(2) Journal of Research on Adolescence 319–330 (2012), https://onlinelibrary.wiley.com/doi/abs/10.1111/j.1532-7795.2012.00832.x).

[35] A number of agencies exist that may address such discrimination, such as the New York State Department of Education, the Office of Civil Rights for the U.S. Department of Education, the New York State Attorney General, the New York State Division on Human Rights, or in New York City, the Commission on Human Rights. For employment related matters, the U.S. Equal Employment Opportunity Commission is also an agency resource as well as the Division on Human Rights and in New York City, the Commission on Human Rights.

[36] *See* Dignity Act 2016 Guidance, supra n. 23.

Appendix A: Resources

- NYS Education Department, Culturally Responsive-Sustaining Education Framework
- NYS Education Department, Dignity for All Students Act webpage, resources and guidance
- NYS Center for School Safety, DASA Resources, Laws & Guidance
- Summary of Racial and Ethnic Identity Frameworks or Models – Summarization of Key Concepts
- Anti-Defamation League – Resources for schools and communities
- GLSEN Safe Space Kit
- GLSEN Educator Resources
- Human Rights Campaign Creating Safe and Welcoming Schools
- The Trevor's Project 2022 National Survey of LGBTQ Youth Mental Health
- GLSEN Gender Triangle Education Guidance