

Dignity for All Students Act (Dignity Act) Glossary

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Dignity for All Students Act (Dignity Act): The intent of the Dignity Act is to provide all public elementary and secondary school students with a safe and supportive environment free from discrimination, harassment, bullying, taunting, or intimidation, as well as to integrate civility, citizenship, and character education into the public school curriculum.

The Dignity Act explicitly provides that no student be subjected to harassment and/or bullying by employees and/or students on school property or at a school function nor shall any student be subjected to discrimination based on his or her actual or perceived race, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender (including gender identity), or sex .

Dignity Act Glossary

Note - This glossary is divided into two sections. The first section contains Dignity Act statutory definitions. The second section contains definitions of Dignity Act-related terms that are derived from a variety of different sources including, but not limited to, federal and state agencies, international groups, and/or other organizations.

Section I – Dignity Act Statutory and Regulatory Definitions

Cyberbullying means harassment or bullying as defined in Education Law §11(7)(a), (b), (c), and (d), that occurs through any form of electronic communication (Education Law §11[8]).

Disability means (a) a physical, mental or medical impairment resulting from anatomical, physiological, genetic or neurological conditions which prevents the exercise of a normal bodily function or is demonstrable by medically accepted clinical or laboratory diagnostic techniques or (b) a record of such an impairment or (c) a condition regarded by others as such an impairment, provided, however, that in all provisions of this article dealing with employment, the term must be limited to disabilities which, upon the provision of reasonable accommodations, do not prevent the complainant from performing in a reasonable manner the activities involved in the job or occupation sought or held (Education Law §11[3] and Executive Law §292[21]).

Discrimination is not specifically defined in the Dignity Act. However, it would include any form of discrimination against students prohibited by state or federal law such as, for example, the denial of equal treatment, admission and/or access to programs, facilities and services based on the person's actual or perceived race, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual

orientation, gender (including gender identity), or sex. 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, and sex.

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 (8 NYCRR §100.2[1][2][ii][b][5]).

Employee means any person receiving compensation from a school district or employee of a contracted service provider or worker placed within the school under a public assistance employment program, pursuant to title nine-B of article five of the Social Services Law, and consistent with the provisions of such title for the provision of services to such district, its students or employees, directly or through contract, whereby such services performed by such person involve direct student contact (Education Law §§11[4] and 1125[3]).

Gender means a person’s actual or perceived sex and includes a person’s gender identity or expression (Education Law §11[6]).¹²¹² It should be noted, for reference purposes only, that the World Health Organization refers to gender as socially constructed roles, behaviors, activities, and attributes that a given society considers appropriate for men and women.

Harassment and bullying means the creation of a hostile environment by conduct or by threats, intimidation, or abuse, including cyberbullying, 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 reasonably causes or would reasonably be expected to cause a student to fear for his or her physical safety; or reasonably causes or would reasonably be expected to cause physical injury or emotional harm to a student; or occurs off school property and creates 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. Acts of harassment and bullying shall include, but not be limited to, those acts based on a person’s actual or perceived race, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender or sex. For the purposes of this definition the term “threats, intimidation or abuse” shall include verbal and non-verbal actions. (Education Law §11[7]).

Material Incident of Harassment, Bullying, and/or Discrimination is defined in 8 NYCRR 100.2(kk)(1)(ix) as 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. This term includes a verified incident or a series of related verified incidents of harassment or bullying that occur 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, and is the subject of a written or oral complaint to the superintendent, principal, or their designee, or other school employee.

Material incidents of harassment, bullying, and/or discrimination would include, but are not limited to: threats, intimidation or abuse based on a person's actual or perceived race, color, weight, national origin, ethnic group, religion, religious practices, disability, sexual orientation, gender, or sex.

School Bus means every motor vehicle owned by a public or governmental agency or private school and operated for the transportation of pupils, children of pupils, teachers and other persons acting in a supervisory capacity, to or from school or school activities, or, privately owned and operated for compensation for the transportation of pupils, children of pupils, teachers and other persons acting in a supervisory capacity to or from school or school activities (Vehicle and Traffic Law §142 and Education Law §11[1]).

School Function means a school-sponsored extra-curricular event or activity (Education Law §11[2]).

School Property means in or within any building, structure, athletic playing field, playground, parking lot, or land contained within the real property boundary line of a public elementary or secondary school; or in or on a school bus (Education Law §11[1] and Vehicle and Traffic Law §142).

Sexual Orientation means actual or perceived heterosexuality, homosexuality, or bisexuality (Education Law §11[5]).¹³

Section II – Dignity Act-Related Terms Definitions

Bias-Related Harassment (or violence) is described by the New York City Commission on Human Rights as conduct that is motivated by a victim's race, color, creed, national origin, gender (including gender identity), sexual orientation, age, marital or partnership status, family status, disability, alienage, or citizenship status.

Bias-motivated conduct may include a pattern of threatening verbal harassment or cyberbullying, the use of force, intimidation or coercion, and defacing or damaging real or personal property.

Bullying has been described by the U.S. Department of Education as unwanted, aggressive behavior that involves a real or perceived power imbalance. The behavior is repeated, or has the potential to be repeated, over time. According to the U.S. Department of Education, bullying generally involves the following characteristics:

- **An Imbalance of Power:** Individuals 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.
- **Intent to Cause Harm:** The person bullying has a goal to cause harm. Bullying is not accidental.
- **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.

Cyberstalking - Repeated harassment that includes threats of harm or that is highly intimidating and intrusive upon one's personal privacy.

Denigration – “Dissing” someone online. Sending or posting cruel gossip or rumors about a person to damage his or her reputation or friendships.

Ethnicity - According to the United Nations, some of the criteria by which ethnic groups are identified are ethnic nationality (in other words, country or area of origin as distinct from citizenship or country of legal nationality), race, color, language, religion, customs of dress or eating, tribe or various combinations of these characteristics. In addition, some of the terms used, such as "race", "origin" and "tribe", have several different connotations. It is important to consider both how a student self-identifies and how he or she is perceived in the school when determining if race and/or ethnicity were the basis of discrimination or harassment directed at the student. While the terms “race” and “ethnicity” have similarities, they are not identical concepts. For example, a student may self-identify as both “Black” and “Latino”. “Black” may describe their race and “Latino” (an ethnic term), may indicate their ancestry, family and/or language traditions. Neither of these terms describes the student's national origin. As such, in this example they may be American, Cuban, Dominican, Guatemalan, etc.

Flaming - Online fights using electronic messages with angry and vulgar language.

Gender Identity and Expression is an individual's internal sense of being a man, a woman, a boy, a girl, or something outside of these binaries. Since gender identity is internal, it is not necessarily visible to others. Some ways in which people may express or represent their gender include dress, hair style, mannerisms, body characteristics, name and pronouns. This has also been described by the Empire State Pride Agenda as the way in which people self-identify and present their masculinity and femininity to the world. Gender identity is not the same as sexual orientation—people of all different orientations can identify and express their gender in many different ways. Students may face harassment or bullying because they are “gender non-conforming,” meaning they express their gender in a way that does not conform to society's expectations, regardless of their sexual orientation.

Happy Slapping - An extreme form of bullying where physical assaults are recorded on mobile phones or digital cameras and distributed to others.

Impersonation - Breaking into someone's account, posing as that person and sending messages to make the person look bad, get that person in trouble or danger, or damage that person's reputation or friendships.

LGBTQ is an acronym that stands for lesbian, gay, bisexual, transgender, queer, or questioning. Lesbian, gay, and bisexual are terms used to describe a person's sexual orientation; people of all different orientations can identify and express their gender in many different ways. Students may face harassment or bullying because they are "gender nonconforming," meaning they express their gender in a way that does not conform to society's expectations, regardless of their sexual orientation and whether they identify as transgender.

Microaggressions - Brief, everyday exchanges, verbal and non-verbal, that send messages to certain individuals that because of their group membership, they have little worth. These small exclusions, expressions, and gestures can affect the quality of life and standard of living for students who are members of marginalized groups, and they create disparities in education. They are often overlooked as contributing to negative school climate. Some examples include:

- Avoiding an empty seat in class because it is next to a larger girl.
- Heavy sighing to indicate disapproval each time a student of a particular race walks into the classroom.
- Leading classroom discussions that assume all students are heterosexual, for example, using classroom materials that define marriage as between a man and a woman.
- The common phrase "that's so gay" is not directed at individuals, but consistently reinforces that "gay" is negative or undesirable.

National Origin Discrimination has been described by the U.S. Department of Justice as discrimination based upon an individual's nationality, country of birth or country of origin, or the country of origin of an individual's family or spouse. It also includes discrimination based upon a person's characteristics that are identified with a particular country or national origin, such as dress, accent, language, religion, or racial attributes.

It is important to consider both how the student self-defines his or her national origin, and how he or she is perceived by others in the school. For example, students of South Asian descent may be harassed by other students who *perceive* them to be of Arab descent; although the students are not actually Arab-American, this harassment would be based on their perceived national origin.

Persistent and/or Pervasive: These terms are often used in the context of harassment lawsuits brought under federal civil rights laws. While they are not used in the text of the Dignity Act, they can act as guideposts for schools in determining the seriousness of student behavior. These terms are often used to distinguish behavior that is not particularly severe and therefore may go unnoticed.

- Persistent refers to behavior that may not be particularly significant in one incident but that is repeated over time in such a way that it creates a hostile environment. For example, a student shoves another student every day in the hallway. The shoves aren't serious and don't cause injury, but over the course of weeks or months they can contribute to the school becoming a hostile environment for the targeted student.

- Pervasive refers to behavior that is relentless and encompasses an entire school building, classroom, or other situation. For example, a gay student who is not necessarily targeted by one other student but is

called various slurs on a day-to-day basis, is excluded from peer groups, and experiences a classroom learning environment that reinforces his “otherness” (for example, a textbook that defines marriage as between a man and a woman) could be said to be experiencing pervasive harassment leading to a hostile environment.

Outing - Sharing someone’s secrets or embarrassing information online.

Race has been described by the National Center for Education Statistics as the groups to which individuals belong, identify with, or belong in the eyes of the community. It is important to consider both how a student self-identifies and how he or she is perceived in the school when determining if race and/or ethnicity were the basis of discrimination or harassment directed at the student.

For reference purposes, it should be noted that the New York State Education Department (Department) reports aggregate racial and ethnic data to the U.S. Department of Education in the following seven categories: (1) Hispanic/Latino; (2) American Indian or Alaskan Native; (3) Asian; (4) Black or African American; (5) Native Hawaiian or Other Pacific Islander; (6) White; or (7) Two or more races. However, this is not a complete list of races or ethnicities that are protected by the Dignity Act—the Dignity Act protects students against harassment, discrimination, or bullying based on a person’s actual or perceived race, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender or sex.

Example: A student with dark skin may be harassed for being “black” in a majority white school and is entitled to the same protection regardless of whether the student identifies as African, Caribbean, South Asian, Latino, or Pacific Islander. It is likely that schools will experience instances where a student’s experience is based on a combination of both race and ethnicity (and other factors as well).

Religion may be defined, according to the United Nations, as either religious or spiritual belief of preference, regardless of whether this belief is represented by an organized group or affiliation with an organized group having specific religious or spiritual tenets.

Religious Practice - According to the U.S. Equal Employment Opportunity Commission, religious observances or practices include attending worship services, praying, wearing religious garb or symbols, displaying religious objects, adhering to certain dietary rules, proselytizing or other forms of religious expression, or refraining from certain activities. Determining whether a practice is religious turns not on the nature of the activity, but on the person’s motivation. The same practice might be engaged in by one person for religious reasons and by another person for purely secular reasons. Whether or not the practice is “religious” is therefore a situational, case-by-case inquiry.

As noted above, religion may be defined, according to the United Nations, as either religious or spiritual belief of preference, regardless of whether this belief is represented by an organized group or affiliation with an organized group having specific religious or spiritual tenets.

Therefore, a student’s belief system may come from a recognized religious authority, or it may not; either way, the student is entitled to the same protection from discrimination and harassment based on his or her

actual or perceived religion or religious practice at school. Harassment, based on a student's religion, could be, for example, other students mocking him for being Jewish; discrimination, based on a student's religious practice, for example, could be a teacher requiring that a student remove a head covering required by the student's religion.

School Climate: *Educating the Whole Child Engaging the Whole School: Guidelines and Resources for Social and Emotional Development and Learning (SEDL) in New York State*, adopted by the New York State Board of Regents in 2011, refers to school climate as the quality and character of school life. School climate promotes or complicates meaningful student learning. Two aspects of school climate, commitment to school and positive feedback from teachers, have been shown to affect students' self-concept. School climate is also a major influence on teacher retention.

Sex – Sex is the biological and physiological characteristics that define men and women. Sex is different than gender, and people may have gender identities or gender expressions that differ from their sex. Sex and gender discrimination and harassment may also overlap, particularly when a student is gender-non-conforming, meaning he or she expresses his or her gender in a way that does not conform to society's expectations. Harassment directed toward that student may take the form of both sexual harassment and gender harassment.

Some examples:

- Male students catcalling at a female student in the hallway is harassment based on sex. Male students making comments about another boy's body in the locker room is also harassment based on sex.
- A student bullying a female classmate because she shaves her head is harassment based on *gender*. The bullying is based on the other student's belief that she has a "boys' haircut" and is "acting like a boy;" in other words, she is bullied because she doesn't conform to gender stereotypes about girls. The World Health Organization has stated that sex refers to the biological and physiological characteristics that define men and women.

Sexting has been described as the sending, receiving or forwarding of sexually suggestive nude or nearly nude photos through text messages or email.

Transgender has been described by the Empire State Pride Agenda as an umbrella term that refers to people who identify their gender differently from what is traditionally associated with the sex assigned to them at birth. This includes people who have undergone medical procedures to change their sex and those who have not. Transgender is not a sexual orientation; transgender students can be gay, straight, bisexual, etc. just like any other student. Transgender people can "transition," meaning they can begin to express their gender identity differently than what is expected of them, at any time in their lives, including childhood. An example of discrimination against a transgender student would be the school refusing to use his preferred gender pronoun and preferred name in class.

Trickery - Tricking someone into revealing secrets or embarrassing information which is then shared online.