

MEMORANDUM

To: Michael Best, Esq., General Counsel to the Chancellor
Brian Ellner, Senior Counselor to the Chancellor
New York City Department of Education

From: The Sikh Coalition
The Asian American Legal Defense and Education Fund
The Coalition for Asian American Children and Families

Date: July 25, 2008

Re: Proposed Chancellor's Regulation Prohibiting Bias-Based Harassment in New York City Schools

I. Introduction

We whole heartedly welcome the Chancellor's commitment to promulgate a Chancellor's Regulation that promotes our common goal of ensuring our schools are free of bias-based harassment. We are also pleased by the Department's willingness to accept this memorandum and consider its recommendations in the spirit of partnership.

From our perspective, a Chancellor's Regulation should ultimately contain the following:

- 1) A definition of prohibited bias-based harassment;
- 2) A system for addressing individual complaints of harassment;
- 3) A means by which reports of bias-based harassment can be tracked and reports may be generated to ensure visibility and accountability in tackling the issue; and
- 4) A means by which remedial measures are taken to address individual instances of bias-based harassment and to address individual schools found to have problems preventing bias-based harassment in schools.

As you are aware, our organizations believe that the Dignity in All Schools Act, passed by the City Council in 2004, provides a strong basis upon which to promulgate a Chancellor's regulation. Nevertheless, New York City is not the first jurisdiction to attempt to address bias-based harassment in schools through regulatory means.

The rest of memorandum therefore draws upon the work of jurisdictions and also organizations outside New York City in order to provide greater detail on what our organizations respectfully believe would constitute a strong Chancellor's Regulation.

II. Specific Recommendations

1. *Defining the Prohibited Conduct*

- i. Who associated with a school is protected? – We recommend that the Regulation protect not only “all students” but that it also protect “all Department personnel and volunteers.” It is helpful that school personnel and volunteers are held up to the same standards as students so that students may model their behavior after responsible adults. We understand that there may be other regulations or guidelines that protect these classes. Regardless, we believe that the standards of the protections be equal between students and adults in the schools.
- ii. What are the protected groups? – We recommend that the protected groups include: actual or perceived age, color, creed, national origin, race, religion, religious practice, marital status, sex, sexual orientation, actual or perceived sex including a person’s gender identity or expression, physical attributes, physical or mental ability or disability, physical and/or emotional condition, ancestry, political party preference, political belief, socioeconomic status, or familial status.
- iii. Where and when are people protected? – Protected spaces should include: the classroom, school property, school buses or vehicles, public transportation taken to and from school, school-sponsored events whether on or off school property, and during a student’s commute to and from school, cyber-space (including school websites and messaging sent wirelessly during hours where a student is under school control and supervision), and any other activity with a nexus to the school.
- iv. What constitutes the prohibited conduct? – Unwelcome acts that create a hostile environment, in whole or in part through physical conduct, in-person or electronic verbal threats, taunting, intimidation or abuse that would have the effect of substantially interfering with a student’s educational performance, opportunities or benefits, or mental, emotional, or physical well-being, or that would reasonably cause or would reasonably be expected to cause a student to fear for his or her physical safety.

2. *A System for Addressing Individual Complaints of Harassment*

- i. To whom are complaints of bias-based harassment reported? - We recommend that the Principal or her or his management designee be the person to whom all complaints of bias-based harassment are ultimately reported. This person’s identity should be made known to

school personnel, students, parents, and volunteers. He or she should be responsible for ensuring school personnel are trained on anti-harassment policies and that parents and children are aware of them. This person should be trained in human relations and about the protected groups described below.

Nevertheless, students should be able to complain to teachers or other management staff about bias-based harassment. In such instances, teachers or management staff after documenting the incident, should report it to the Principal or her or his management designee as soon as possible and at latest within 24 hours.

- ii.* By what means may complaints of bias-based harassment be reported?
- Complaints should be able to be made either orally or in writing to either teachers, management staff, or the Principal or her or his management designee. Any teacher or school management staff that receives a complaint orally should document it and report it to the school Principal or her or his management designee as soon as possible and at latest within 24 hours. If the student needs interpretation, the school must secure qualified interpretation by an adult.
- iii.* Who is responsible for informing students, parents, and school personnel of bias-based harassment policies?- The school Principal or her or his management designee.
- iv.* What information should complaints contain? - Complaints should at least be reasonably specific as to the actions giving rise to the suspicion of harassment, intimidation and/or bullying, including person(s) involved, number of times and places of the alleged conduct, the target of the prohibited behavior(s), and the names of any potential student or staff witness.
- v.* Which school personnel are informed of or trained on bias-based harassment policies? – All.
- vi.* By what means and how often are school personnel trained on these policies? – All school personnel, in particular teachers, should receive training once per year on these policies. Such training should include the receipt of a written guide on the Regulation. Such training should also work to raise awareness and sensitivity of pupils regarding potential harassment and fostering empathy and empathetic conduct among students.
- vii.* By what means and how often are school personnel informed or trained on these policies? – All students should receive training once

per year on these policies. Such training should include receipt of a written guide on the Regulation. Translated copies should be available to English Language Learner (ELL) students in the eight (8) most common languages spoken by New York City public school students. Students should be involved in planning and conducting this training, and planning and conducting activities throughout the year to promote diversity and tolerance.

- viii.* By what means and how often are parents and students informed of bias-based harassment policies? – During the first two weeks of each school year or within the first two weeks a student is admitted into school, parents and students should be informed of this Regulation. Students should be informed of the policy verbally in class and parents should be informed in writing at least during the beginning of the school year and periodically thereafter as needed. Translated notifications shall be distributed in the eight (8) most common languages spoken by New York City public school students. Such information should also work to raise awareness and sensitivity of pupils regarding potential harassment and fostering empathy and empathetic conduct among students. Such provided information should be in compliance with city, state, and federal language access policies and laws.
- ix.* How are complainants protected from retaliation? - No school district or employee shall take, request or cause retaliatory action against any person reporting an incident or incidents of bias-based harassment. Any person reporting an incident has immunity from civil liability that may arise from making a report or from testifying, participating or assisting in proceedings.
- x.* What are the responsibilities of school personnel in prohibiting and addressing bias-based harassment in schools? – School personnel should intervene promptly whenever they observe student conduct that has the purpose or effect of creating a situation of bias-based harassment. Such intervention should include an obligation to report the observed behavior to a school’s Principal or her or his designee.
- xi.* How should a school respond to a complaint? – The Principal or her or his designee should interview the victim and witnesses as soon as possible. Within ten (10) days after the incident, the Principal or her or his designee must prepare a written report with findings of fact, a determination of whether acts of bias-based harassment occurred, and a recommendation for disciplinary or non-disciplinary action. Where appropriate, victim or witness statements should be attached. A copy of the report must be given to the victim and/or his or her guardian.

3. *Tracking and Reporting on Bias-Based Harassment in Schools*

- i. Who is responsible for ensuring all reports of bias are tracked? - The school's Principal or his or her designee is responsible within each school. The Chancellor shall appoint a person at headquarters to ensure Principals report and track incidents of bias.
- ii. In what system or where are complaints logged? – All complaints should be tracked electronically in a central database not connected to an individual school, but to Department headquarters.
- iii. What information should a tracked complaint contain? – At a minimum the information tracked should be: a) a description of the incident(s) being addressed; (b) the result of an investigation; (c) what actions were taken in response.
- iv. How often must a school and/or the Chancellor publish a report of bias-based harassment in schools? Semi-annually.

4. *Addressing Individual Incidents of Bias-Based Harassment and Problem Schools*

- i. What measures may be taken if it is found that an incident of bias-based harassment has occurred? – Measures taken can be both or either disciplinary or non-disciplinary in nature. In determining appropriate measures to be taken, the Principal or her or his designee should consider:

- the degree of harm caused by the incident(s);
- the surrounding circumstances;
- the nature and severity of the behavior;
- the relationship between the parties involved; and,
- past incidences or continuing patterns of behavior.

After consideration of these factors, remedial measures taken can include but should not be limited to non-disciplinary measures such as peer mediation and counseling. Any disciplinary measures taken should be accordance with due process rights and existing Department procedures.

Measures to protect victims may include safety transfers and peer mediation and counseling.

- ii. What measures may be taken if it is found that bias-based harassment is a problem at a school? – Headquarters should have sole discretion to

determine whether a school has problems controlling or addressing bias-based harassment in schools. In such instances, the Department may institute *mandatory* measures as it sees fit to address the problem.