



TO: The Honorable the Members of the Board of Regents

FROM: James N. Baldwin 

SUBJECT: Proposed Technical Amendment to Section 100.2(gg)(8) of the Regulations of the Commissioner of Education Relating to the Uniform Violent or Disruptive Incident Reporting System, Also Known as the School Safety and Educational Climate Reporting System

DATE: November 4, 2021

AUTHORIZATION(S): 

SUMMARY

Issue for Decision (Consent)

Should the Board of Regents adopt the proposed technical amendment of section 100.2(gg)(8) of the Regulations of the Commissioner of Education relating to the Uniform Violent or Disruptive Incident Reporting System, also known as the School Safety and Educational Climate Reporting System?

Reason(s) for Consideration

Review of Policy.

Proposed Handling

The proposed amendment is submitted to the Full Board for adoption as an emergency rule at the November 2021 Board of Regents meeting. A copy of the proposed amendment is included (Attachment A) and a statement of facts and circumstances justifying emergency action is included (Attachment B).

Procedural History

The proposed amendment was presented to the Full Board for adoption as an emergency rule at the July 2021 meeting of the Board of Regents. A Notice of Emergency Adoption and Proposed Rule Making was published in the State Register on September 29, 2021 for a 60-day public comment period. Because the July 2021 emergency action will expire on December 6, 2021, a second emergency action is necessary to ensure the emergency rule remains continuously in effect until it can be

permanently adopted at the January 2022 Regents meeting. Supporting materials are available upon request to the Secretary of the Board of Regents.

Background Information

At its April 2021 meeting, the Board of Regents voted to adopt amendments to section 100.2 (cc), (gg) and 120.3(a) of the Commissioner's regulations to: (1) update the definitions of violent and disruptive incidents for purposes of the uniform violent and disruptive incident reporting system (VADIR), also known as the safe schools and educational climate (SSEC) reporting system, consistent with the requirements of Education Law §2802 and the recommendations of the Department's Safe Schools Task Force; and (2) update the categories of serious violent incidents that are included in the School Violence Index (SVI) and used for the purposes of determining persistently dangerous schools, consistent with the recommendations of the Safe Schools Task Force.

The April 2021 amendments to the Commissioner's regulations inadvertently omitted the word "assault" in section 100.2(gg)(8) as a category of serious violent incidents that must be included for purposes of determining persistently dangerous schools. Therefore, the proposed amendment is necessary to resolve this oversight by inserting the omitted language.

Related Regents Items

April 2021: [Proposed Amendment to Sections 100.2\(cc\), \(gg\) and 120.3\(a\) of the Regulations of the Commissioner of Education Relating to the Uniform Violent or Disruptive Incident Reporting System, Also Known as the School Safety and Educational Climate Report](https://www.regents.nysed.gov/common/regents/files/4211brca12.pdf)

(<https://www.regents.nysed.gov/common/regents/files/4211brca12.pdf>)

July 2021: [Proposed Technical Amendment to Section 100.2\(gg\)\(8\) of the Regulations of the Commissioner of Education Relating to the Uniform Violent or Disruptive Incident Reporting System, Also Known as the School Safety and Educational Climate Reporting System](https://www.regents.nysed.gov/common/regents/files/721brca10.pdf)

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Recommendation

It is recommended that the Board of Regents take the following action:

VOTED: That section 100.2(gg)(8) of the Regulations of the Commissioner of Education be amended, as submitted, effective December 7, 2021, as an emergency action upon a finding by the Board of Regents that such action is necessary for the preservation of the general welfare to immediately make a technical correction to ensure that the amendments to the Commissioner's regulations adopted at the April 2021 meeting are properly administered pursuant to the policies established by the

Board of Regents and to ensure the emergency action taken at the July 2021 Regents meeting remains continuously in effect.

Timetable for Implementation

It is anticipated that the proposed rule will be presented to the Board of Regents for permanent adoption at the January 2022 Regents meeting, after publication of the proposed rule in the State Register and expiration of the 60-day public comment period required under the State Administrative Procedure Act. If adopted at the January meeting, the proposed rule will become effective as a permanent rule on January 26, 2022.

AMENDMENT TO THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to sections 15, 101, 207, 305, 308, and 2802 of the Education Law.

1. Paragraph (8) of subdivision (gg) of section 100.2 of the Regulations of the Commissioner of Education is amended to read as follows:

(8) Persistently dangerous schools. For purposes of determining persistently dangerous schools pursuant to section 120.3 of this Subchapter, only the most serious violent incidents, which shall include only the following categories of incidents: assault, homicide, sexual offense, and incidents involving the possession or use of a weapon, as defined in this subdivision, shall be used in making such determination.

STATEMENT OF FACTS AND CIRCUMSTANCES WHICH
NECESSITATE EMERGENCY ACTION

At its April 2021 Regents meeting, the Board of Regents voted to adopt amendments to section 100.2 (cc), (gg) and 120.3(a) of the Commissioner's regulations to: (1) update the definitions of violent and disruptive incidents for purposes of the uniform violent and disruptive incident reporting system (VADIR), also known as the safe schools and educational climate (SSEC) reporting system, consistent with the requirements of Education Law §2802 and the recommendation of the Department's Safe Schools Task Force; and (2) update the categories of serious violent incidents that are included in the School Violence Index (SVI) and used for the purposes of determining persistently dangerous schools, consistent with the recommendations of the Safe Schools Task Force.

The April 2021 amendments to the Commissioner's regulations inadvertently omitted the word "assault" in section 100.2(gg)(8) concerning the categories of serious violent incidents that must be included for purposes of determining persistently dangerous schools. Therefore, the proposed amendment is necessary to resolve this oversight by inserting the inadvertently omitted language.

The proposed amendment was presented to the Full Board for adoption as an emergency rule at the July 2021 meeting of the Board of Regents, effective September 8, 2021. Since the Board of Regents meets at fixed intervals, the earliest the proposed amendment could be adopted by regular (nonemergency) action after expiration of the 60-day public comment period provided for in the State Administrative Procedure Act (SAPA) sections 201(1) and (5) would be the January 2022 Regents meeting.

Furthermore, pursuant to SAPA 203(1), the earlier effective date of the proposed rule, if adopted at the January 2022 meeting, would be January 26, 2022 the date the Notice of Adoption would be published in the State Register.

However, the emergency rule will expire December 6, 2021. Therefore, a second emergency action is necessary at the November 2021 meeting for the preservation of the general welfare in order to immediately make a technical correction to ensure that the amendments to the Commissioner's regulations adopted at the April 2021 meeting are properly administered pursuant to the policies established by the Board of Regents and to ensure that the emergency action taken at the July 202 meeting remains continuously in effect until the rule can be permanently adopted.

It is anticipated that the proposed rule will be presented to the Board of Regents for adoption as a permanent rule at the January 2022 meeting, which is the first scheduled meeting after expiration of the 60-day public comment period mandated by SAPA for state agency rule making.