



TO: P-12 Education Committee

FROM: Kimberly Young Wilkins 

SUBJECT: Proposed Amendment to Section 100.2(c) of the Regulations of the Commissioner of Education to Implement Erin's Law

DATE: December 3, 2020

AUTHORIZATION(S):   

SUMMARY

Issue for Decision

Should the Board of Regents amend Section 100.2(c) of the Regulations of the Commissioner of Education to implement Erin's Law?

Reason(s) for Consideration

Required by State statute (L. 187 of 2019).

Proposed Handling

The proposed amendment will be presented to the P-12 Education Committee for discussion and to the Full Board for adoption as an emergency rule at its December 2020 meeting. A copy of the proposed rule is attached (Attachment A), as well as a statement of facts and circumstances justifying emergency action (Attachment B).

Procedural History

A Notice of Emergency Adoption and Proposed Rule Making will be published in the State Register on December 30, 2020. Supporting materials are available upon request to the Secretary to the Board of Regents.

Background Information

On August 29, 2019, Governor Andrew M. Cuomo signed legislation adding a new section 803-b to the Education Law [[Chapter 187 of the Laws of 2019](https://legislation.nysenate.gov/pdf/bills/2019/A2577B) (<https://legislation.nysenate.gov/pdf/bills/2019/A2577B>)] - known as Erin's Law. Erin's Law is named for Erin Merryn, an abuse survivor and activist against child sexual abuse

and exploitation who has advocated for similar laws nationwide for over a decade. Erin's Law requires that all students in kindergarten through grade 8 receive instruction designed to prevent child sexual exploitation and child sexual abuse. Such program of instruction must be designed to educate students, parents, and school personnel about the prevention of child sexual exploitation and child sexual abuse. The law is intended to help children, teachers, and parents in New York State identify sexual abuse, and to provide awareness, assistance, referral, or resource information for children and families who are victims of child sexual abuse.

The Department has worked with key partners over the past year to develop guidance and resources to support this law. The New York State Education Department has created an [Erin's Law website](http://www.nysed.gov/curriculum-instruction/erins-law) (<http://www.nysed.gov/curriculum-instruction/erins-law>) with curriculum resources to support this endeavor and to provide assistance to schools, families, and educators. The website and resources have been developed with the input, review, and help of partners such as the New York State Department of Health, the NYS Office of Children and Family Services (OCFS), and the New York State Center for School Health. These tools and resources can be used in schools to ensure students in kindergarten through grade 8 have the instruction, support, and knowledge needed to protect themselves, as well as how to seek help when needed.

The New York State Education Department recommends that educators create their own Erin's Law curriculum to best fit within their school and programs, in accordance with the existing NYS standards for Health Education, to fully comply with the intent of Erin's Law. Although curriculum remains a local decision in New York State, the resources provided on the website can serve as a foundation in local curriculum development and instruction. As more resources are available, the Department will review and share them on the Erin's Law website. NYSED's Erin's Law website includes the following:

- Background on Erin's Law and school district responsibilities;
- Grade band (K-2; 3-4; 5-6; and 6-8) curriculum benchmark guidance; and
- Links to resources or programs that could be used to support local curriculum decisions and instruction.

NYSED also encourages local school districts to partner with families and communities to make decisions about sexual abuse education that are developmentally appropriate and consistent with community values.

Proposed Amendments

The proposed amendment to section 100.2(c) of the Commissioner's regulations implements the provisions of Erin's Law by adding the requirement that all public school students in kindergarten through grade 8 receive instruction designated to educate students, parents, teachers, and other school personnel about the prevention of child sexual exploitation and child sexual abuse. The proposed amendment provides that such instruction may be included as part of a school's health education program and should be developed in consultation with school counselors, school social workers, parents, and

community members. Additionally, the proposed amendments provide that such instruction shall be designed to: (1) assist children, parents, teachers, and other school personnel in identifying child sexual abuse and child sexual exploitation; (2) provide awareness, assistance, referral, and resource information for children and families who are victims of child sexual abuse and/or child sexual exploitation; and (3) be aligned to the grade band objectives prescribed by the Commissioner in guidance.

Related Regents Items

Not applicable.

Recommendation

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

VOTED: That Section 100.2(c) be amended, as submitted, effective December 15, 2020, as an emergency action upon a finding by the Board of Regents that such action is necessary for the preservation of the public health and general welfare to immediately align the Commissioner's Regulations with Erin's Law.

Timetable for Implementation

If adopted at the December 2020 Regents meeting, the emergency rule will become effective December 15, 2020. It is anticipated that the proposed rule will be presented to the Board of Regents for permanent adoption at the April 2021 Regents meeting, after publication of the proposed amendment in the State Register and expiration of the 60-day public comment period required under the State Administrative Procedure Act. Because the emergency action will expire before the April 2021 Regents meeting, it is anticipated that an additional emergency action will be presented for adoption at the February 2021 Regents meeting. If adopted at the April meeting, the revised proposed rule will become effective on April 28, 2021.

Attachment A

AMENDMENT OF THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to section 803-b of the Education Law

1. Subdivision (c) of section 100.2 of the Regulations of the Commissioner of Education is amended by adding a new paragraph (12) to read as follows:

(12) for all public school students in grades kindergarten through 8, instruction designed to educate students, parents, teachers, and other school personnel about the prevention of child sexual exploitation and child sexual abuse in accordance with section 803-b of the Education Law. Such instruction may be included as part of a school's health education program pursuant to section 135.3 of this Title. Curriculum addressing this topic should be developed in consultation with school counselors, school social workers, parents and community members and shall be designed to:

(i) assist children, parents, teachers, and other school personnel in identifying child sexual abuse and child sexual exploitation;

(ii) provide awareness, assistance, referral, and resource information for children and families who are victims of child sexual abuse and/or child sexual exploitation; and

(ii) be aligned to grade band objectives prescribed by the commissioner in guidance.

STATEMENT OF FACTS AND CIRCUMSTANCES WHICH NECESSITATE
EMERGENCY ACTION

The proposed amendment to section 100.2(c) of the Regulations of the Commissioner of Education is necessary to implement Chapter 187 of the Laws of 2019 (“Chapter 187” or “Erin’s Law”), which amended the Education Law, effective July 1, 2020. Erin’s Law requires that all students in kindergarten through grade 8 receive instruction designed to prevent child sexual exploitation and child sexual abuse. Such program of instruction must be designed to educate students, parents and school personnel about the prevention of child sexual exploitation and child sexual abuse.

The proposed amendment to section 100.2(c) of the Regulations of the Commissioner of Education implements Erin’s Law by adding a new paragraph (12) to such section requiring that all public school students in kindergarten through grade 8 receive instruction designated to educate students, parents, teachers, and other school personnel about the prevention of child sexual exploitation and child sexual abuse. The proposed amendment provides that such instruction may be included as part of a school’s health education program and should be developed in consultation with school counselors, school social workers, parents, and community members. Additionally, the proposed amendments provide that such instruction shall be designed to: (1) assist children, parents, teachers, and other school personnel in identifying child sexual abuse and child sexual exploitation; (2) provide awareness, assistance, referral, and resource information for children and families who are victims of child sexual abuse and/or child sexual exploitation; and (3) be aligned to the grade band objectives prescribed by the

Commissioner in guidance.

Since the Board of Regents meets at fixed intervals, the earliest the proposed rule can be presented for permanent adoption, after expiration of the required 60-day comment period provided for in the State Administrative Procedure Act (SAPA) sections 201(1) and (5), would be the April 2021 Regents meeting. Furthermore, pursuant to SAPA 203(1), the earliest effective date of the proposed rule, if adopted at the April meeting would be April 28, 2021, the date the Notice of Adoption would be published in the State Register.

Therefore, emergency action is necessary at the December 2020 meeting for the preservation of the public health and general welfare in order to immediately conform the Regulations of the Commissioner of Education to Chapter 187, which requires that all students in grades kindergarten through 8, receive instruction designated to educate students, parents, teachers, and other school personnel about the prevention of child sexual exploitation and child sexual abuse.

It is anticipated that the proposed rule will be presented for adoption as a permanent rule at the April 2021 Regents meeting, which is the first scheduled meeting after the 60-day public comment period prescribed in SAPA for State agency rule making. However, since the emergency regulation will expire before the April Regents meeting, it is anticipated that an additional emergency action will be presented for adoption at the February 2021 Regents meeting.