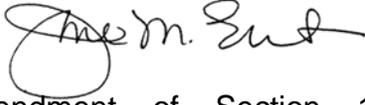




**TO:** The Honorable the Members of the Board of Regents

**FROM:** Jhone M. Ebert 

**SUBJECT:** Proposed Amendment of Section 155.17 of the Commissioner's Regulations relating to School Safety Plans and Fire and Emergency Drills

**DATE:** September 1, 2016

**AUTHORIZATION(S):**  

### SUMMARY

#### **Issue for Decision (Consent Agenda)**

Should the Board of Regents adopt the proposed amendment of section 155.17 of Commissioner's Regulations in regard to school safety plans and fire and emergency drills to conform to statute?

#### **Reason(s) for Consideration**

Required by statute (Part B of Chapter 54 of the Laws of 2016).

#### **Proposed Handling**

The proposed rule is being presented to the Full Board for adoption as a permanent rule at the September 2016 Regents meeting. Supporting materials are available upon request from the Secretary to the Board of Regents.

#### **Procedural History**

The proposed amendment was adopted by the Board of Regents at its June 2016 meeting as an emergency measure, effective July 1, 2016, in order to timely implement Part B of Chapter 54 of the Laws of 2016. A Notice of Emergency Adoption and Proposed Rule Making was published in the State Register on June 29, 2016. A

copy of the proposed rule is attached. Supporting materials are available upon request from the Secretary to the Board of Regents.

### **Background Information**

Over the past few decades, threats to schools have evolved and recent events have demonstrated that there are people who seek to commit violent acts in schools. Whether this threat is posed by a member of the school community or an outside individual or group, school staff must be prepared to take immediate protective action in the event of such an incident. Historically, school emergency planning focused on fire safety through regular fire drills in schools. As a result of good planning and modern safety systems such as fire alarms and sprinklers, fire-related fatalities in public schools are now nearly nonexistent in the United States. However, it has become clear that for schools to be equally as prepared for a possible occurrence of violence, expanded emergency response drills, including lock-down drills, are essential.

Due to the importance of school preparedness in an emergency, the New York State School Safety Improvement Team—which is composed of staff from the Governor's Office of Public Safety, the New York State Police, the New York State Education Department, the New York State Division of Homeland Security and Emergency Services, and the New York State Division of Criminal Justice Services—recommended statutory amendments to improve the scope of school emergency response planning. These changes included reducing the required number of annual fire drills as well as adding a new requirement that schools conduct four annual lock-down drills. As such, the 2016-17 enacted State budget included amendments to Education Law Sections 2801-a and 807 (Chapter 54 of the Laws of 2016). These amendments took effect on July 1, 2016. Highlights of these changes are below.

### **Amendments to Education Law § 2801-a: School Safety Plans**

1. In addition to the existing notification requirements in the event of a violent incident, the statute now requires that each district develop policies and procedures for contacting parents, guardians, or persons in a parental relation to a student in the event of an implied or direct threat of violence by a student against themselves, including threat of suicide.
2. The statute includes a new requirement that each district submit certification to NYSED that all district and school staff have undergone annual training on the emergency response plan, and that the school safety training include components on violence prevention and mental health. New employees hired after the start of the school year must receive training within 30 days of hire. The Department will require schools to certify that all school staff received this training by September 15<sup>th</sup> of each school year, or within 30 days of hire, whichever is sooner.<sup>1</sup>

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<sup>1</sup> Certification that staff has received training as indicated in #2 will be collected as part of the Basic Educational Data System (BEDS) collection beginning in October 2016.

3. The amendments require district-wide safety plans to include the designation of a chief emergency officer who is responsible for coordinating communication between staff and law enforcement and first responders and for ensuring staff understanding of the district-level safety plan. The chief emergency officer shall also be responsible for ensuring completion and yearly update of building-level emergency response plans. The building-level emergency response plan shall be kept confidential and shall not be disclosed except to authorized department staff and law enforcement officers.<sup>2</sup>
4. The amendments require that building-level emergency response plans include policies and procedures for response to emergency situations such as those requiring evacuation, sheltering and lock-down (evacuation routes, shelter sites, procedures for addressing medical needs, transportation and emergency notification of parents and guardians). The building-level emergency response team is now expanded to include fire officials, and at the discretion of the board, a student may be permitted to participate in the school safety team, but may not have access to confidential building-level emergency response plans or be present where confidential building-level emergency response plans are being discussed.
5. The statute eliminated the provision allowing single building districts to create a building-level emergency response plan that contains all aspects of the district plan. However, the statute now authorizes the Commissioner, in consultation with the Superintendent of State Police, to develop an appeals process from duplicative requirements of district-wide school safety plans for districts with only one school building.
6. The amendments require the district-wide safety plans to be made available for public comment; however, to comply with the confidentiality provisions of this section, public comment is no longer required for the summary of the building-level emergency response plan.
7. Additional technical amendments were made to the statute to eliminate certain expired provisions relating to Project SAVE Legislation, making the language throughout more consistent and easier to understand.
8. The amendments removed the Commissioner's authority to provide a waiver from the requirements of this section for a two-year period for schools that had plans in substantial compliance prior to the effective date of this section.

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<sup>2</sup> Information relating to the designation of the Chief Emergency Officer will be collected as part of BEDS beginning in October 2016.

## **Amendments to Education Law §§ 807(1-a), 807 (b): Fire and Emergency Drills**

1. The amendments expanded fire drill requirements to also include emergency drills to prepare students to be able to respond appropriately in the event of a sudden emergency.
2. The statute now requires twelve drills be conducted each school year, four of which must be lock-down drills, the remaining eight are required to be evacuation drills.
3. There is still a requirement that eight of the required twelve drills must be completed in the first half of the school year. However, the date of completion has been changed from December 1 to December 31 of each school year.

The statute now explicitly requires schools to conduct lock-down drills, which are essential, because they prepare students and staff to respond to the highest level of threat with the most urgent action and the least margin for error. The goal is to have schools conduct drills where they immediately clear hallways, lock doors and take positions out of sight to practice their ability to put the building into a protective posture as quickly as possible. These emergency measures allow time for responding law enforcement to arrive on scene and neutralize the threat. If possible, law enforcement should be involved in the drills to help prepare students and staff for their interactions and release from lock-down by uniformed officers. However, law enforcement involvement is not required by the new legislative mandate. Other protective actions such as lock-out or shelter in place are emergency actions that are usually preceded by some degree of warning time and do not require the immediate response necessary for a lock-down. While the school should be well versed in their lock-out and shelter in place protocols, lock-down is the only type of protective action that is specifically required by the statute.

The proposed amendment makes conforming changes to section 155.17 of the Commissioner's regulations to implement these new statutory requirements.

Following the 45-day public comment period required under the State Administrative Procedure Act, the Department received several comments on the proposed amendment. An Assessment of Public Comment is included as Attachment B.

### **Related Regent's Items**

<http://www.regents.nysed.gov/common/regents/files/616p12a3.pdf>  
<https://www.regents.nysed.gov/common/regents/files/meetings/Oct%202015/1015p12d1.pdf>  
<http://www.regents.nysed.gov/common/regents/files/SafeSchoolsTaskForce.pdf>  
<http://www.regents.nysed.gov/common/regents/files/SafeSchools.pdf>  
<http://www.regents.nysed.gov/common/regents/files/614p12d1.pdf>

## **Recommendation**

Staff recommends that the Regents take the following action:

VOTED: That section 155.17 of the Regulations of the Commissioner be amended, as submitted, effective September 28, 2016.

## **Timetable for Implementation**

If adopted at the September Regents meeting, the proposed amendment will become effective as a permanent rule on September 28, 2016.

**Attachment A**

AMENDMENT OF THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to Education Law sections 101, 207, 305, 2801-a, and Chapter 54 of the Laws of 2016.

1. Section 155.17 of the Regulations of the Commissioner of Education is amended, effective September 28, 2016, as follows:

§155.17

[(a) ...]

(a) Development of school safety plans. Every board of education of a school district, every board of cooperative educational services and county vocational education and extension board and the chancellor of the City School District of the City of New York shall adopt by July 1, 2001, and shall update by [July 1st of each succeeding year] July 1 for the 2002-2003 through the 2015-2016 school years and by September 1 for the 2016-2017 school year and each subsequent September 1 thereafter, a comprehensive district-wide school safety plan and building-level [school safety] emergency response plans regarding crisis intervention and emergency response and management, provided that in the City School District of the City of New York, such plans shall be adopted by the chancellor of the city school district. Such

plans shall be developed by a district-wide school safety team and a building-level [school safety] emergency response team, as such terms are defined in subdivision [(c)] (b) of this section, and shall be in a form developed by the commissioner in consultation with the Division of Criminal Justice Services, the superintendent of the State Police and any other appropriate State agencies. [A school district having only one school building shall develop a single building-level school safety plan, which shall also fulfill all requirements for development of a district-wide plan to insure the safety and health of children and staff and to insure integration and coordination with similar emergency planning at the municipal, county and State levels.] Each district-wide school safety plan and building-level emergency response plan shall be reviewed by the appropriate school safety team on at least an annual basis, and updated as needed.

[(c)] (b) *Definitions.* As used in this section:

(1)...

(2)...

(3)...

(4) *Emergency* means a situation, including but not limited to a disaster[,] that requires immediate action, occurs unpredictably, and poses a threat of injury or loss of life to students or school personnel or of severe damage to school property.

(5)...

(6)...

(7)...

(8)...

(9)...

(10) Lock-down means to immediately clear the hallways, lock and/or barricade doors, hide from view, and remain silent while readying a plan of evacuation as a last resort. Lock-down will only end upon physical release from the room or secured area by law enforcement.

[(10)] (11) Building-level [school safety] emergency response plan means a building-specific school emergency response plan that addresses crisis intervention, emergency response and management at the building level and has the contents prescribed in paragraph [(e)](c)(2) of this section.

[(11)] (12) Building-level [school safety] emergency response team means a building-specific team appointed by the building principal, in accordance with regulations or guidelines prescribed by the board of education, the chancellor in the case of New York City, or other governing body. The building-level emergency response team is responsible for the designation of the emergency response team and the development of the building-level emergency response plan and its required components. The building-level emergency response team shall include, but not be limited to, representatives of teacher, administrator, and parent organizations, school safety personnel, other school personnel, community members, local law enforcement officials, local ambulance, fire officials or other emergency response agencies, and any other representatives the school board, chancellor or other governing body deems appropriate.

[(12)] (13) *District-wide school safety plan* means a comprehensive, multi-hazard school safety plan that covers all school buildings of the school district, BOCES or county vocational education and extension board, that addresses crisis intervention, emergency response and management at the district level and has the contents prescribed in paragraph [(e)](c)(1) of this section.

[(13)] (14) *District-wide school safety team* means a district-wide team appointed by the board of education, the chancellor in the case of New York City, or other governing board. The district-wide team shall include, but not be limited to, representatives of the school board, [student,] teacher, administrator, and parent organizations, school safety personnel and other school personnel. At the discretion of the board of education, or the chancellor in the case of the City of New York, a student may be allowed to participate on the safety team, provided however, that no portion of a confidential building-level emergency response plan shall be shared with such student nor shall such student be present where details of a confidential building-level emergency response plan or confidential portions of a district-wide emergency response strategy are discussed.

[(14)] (15) *Emergency response team* means a building-specific team designated by the building-level [school safety] emergency response team that [includes appropriate] is comprised of school personnel, [local] law enforcement officials, fire officials, and representatives from local, regional and/or State emergency response agencies and assists the school community in responding to a [serious] violent incident or emergency. In a school district in a city having a population of more than one million inhabitants, such emergency response team may be created on the district-level with

building-level participation, and such district shall not be required to establish a unique team for each of its schools.

[(15)] (16) *Post-incident response team* means a building-specific team designated by the building-level [school safety] emergency response team that includes appropriate school personnel, medical personnel, mental health counselors and others who can assist the school community in coping with the aftermath of a [serious] violent incident or emergency. In a school district in a city having a population of more than one million inhabitants, such post-incident response team may be created on the district-level with building-level participation, and such district shall not be required to establish a unique team for each of its schools.

[16] (17) . . .

[17](18) . . .

[(d) . . .]

[(e)] (c) *District-wide [School] school safety plans and building-level emergency response plans*. District-wide school safety plans and building-level [school safety] emergency response plans shall be designed to prevent or minimize the effects of [serious] violent incidents and emergencies and to facilitate the coordination of schools and school districts with local and county resources in the event of such incidents or emergencies.

(1) District-wide school safety plans. A district-wide school safety plan shall be developed by the district-wide school safety team and shall include, but not be limited to:

[(i). . .

(ii). . .

(iii)] (i) policies and procedures for responding to implied or direct threats of violence by students, teachers, other school personnel and visitors to the school, including threats by students against themselves, which for the purposes of this subdivision shall include suicide;

[(iv)] (ii)...

[(v)] (iii)...

[(vi)] (iv)...

[(vii)] (v) ...

[(viii)] (vi)...

[(ix)] (vii)...

[(x)] (viii)...

[(xi)] (ix)...

(x) policies and procedures for contacting parents, guardians or persons in parental relation to an individual student of the district in the event of an implied or direct threat of violence by such student against themselves, which for the purposes of this subdivision shall include suicide;

[(xii)] (xi)...

[(xiii)] (xii)...

[(xiv)] (xiii) policies and procedures for annual multi-hazard school safety training for staff and students, provided that the district must certify to the commissioner that all staff have undergone annual training by September 15, 2016 and each subsequent

September 15 thereafter on the building-level emergency response plan which must include components on violence prevention and mental health, provided further that new employees hired after the start of the school year shall receive such training within 30 days of hire or as part of the district's existing new hire training program, whichever is sooner.

[(xv)] (xiv)...

[(xvi)] (xv)...

[(xvii)] (xvi)...

[(xviii)] (xvii)...

[(xix)] (xviii) in the case of a school district, except in a school district in a city having more than one million inhabitants, a system for informing all educational agencies within such school district of a disaster[.]; and

(xix) the designation of the superintendent, or superintendent's designee, as the district chief emergency officer whose duties shall include, but not be limited to:

(a) coordination of the communication between school staff, law enforcement, and other first responders;

(b) lead the efforts of the district-wide school safety team in the completion and yearly update of the district-wide school safety plan and the coordination of the district-wide plan with the building-level emergency response plans;

(c) ensure staff understanding of the district-wide school safety plan;

(d) ensure the completion and yearly update of building-level emergency response plans for each school building;

(e) assist in the selection of security related technology and development of

procedures for the use of such technology;

(f) coordinate appropriate safety, security, and emergency training for district and school staff, including required training in the emergency response plan;

(g) ensure the conduct of required evacuation and lock-down drills in all district buildings as required by Education Law section 807; and

(h) ensure the completion and yearly update of building-level emergency response plans by the dates designated by the commissioner.

(2) [School] Building-level emergency response plan. A [school] building-level emergency response plan shall be developed by the building-level [school safety] emergency response team, shall be kept confidential, including but not limited to the floor plans, blueprints, schematics or other maps of the immediate surrounding area, and shall not be disclosed except to authorized department or school staff, and law enforcement officers, and shall include the following elements:

(i) policies and procedures for the [safe evacuation of students, teachers, other school personnel and visitors to the school in the event of a serious violent incident or other emergency which may occur before, during or after school hours] response to emergency situations, such as those requiring evacuation, sheltering, and lock-down, which shall include, at a minimum, the description of plans of action for evacuation [and], sheltering, lock-down, evacuation routes and shelter sites, and procedures for addressing medical needs, transportation and emergency notification to persons in parental relation to a student;

(ii)...

(iii) [procedures for assuring that crisis response, fire and law enforcement

officials have access to] floor plans, blueprints, schematics or other maps of the school interior, school grounds and road maps of the immediate surrounding area;

(iv) . . .

(v) . . .

(vi) coordination of the [school safety] building-level emergency response plan with the statewide plan for disaster mental health services to assure that the school has access to Federal, State and local mental health resources in the event of a violent incident;

(vii) procedures for an annual review of the building-level emergency response plan and the conduct of drills and other exercises to test components of the building-level emergency response plan, including the use of tabletop exercises, in coordination with local, [and] county, and state emergency responders and preparedness officials;

(viii) . . .

(ix) . . .

(3) Each board of education, chancellor or other governing body shall make each district-wide [and building-level school] safety plan available for public comment at least 30 days prior to its adoption[, provided that only a summary of each building-level emergency response plan shall be made available for public comment]. Such district-wide [and building-level] plans may be adopted by the school board only after at least one public hearing that provides for the participation of school personnel, parents, students and any other interested parties. Each district shall file a copy of its district-wide [comprehensive] safety plan with the commissioner and all amendments to such plan shall be filed with the commissioner\_no later than 30 days after their adoption.

Each board of education, chancellor or other governing body or officer shall ensure that a copy of each building-level [safety] emergency response plan and any amendments thereto, [shall be] is filed with the appropriate local law enforcement agency and with the State Police within 30 days of its adoption, but no later than October 15, 2016 and each subsequent October 15 thereafter. Building-level emergency response plans shall be confidential and shall not be subject to disclosure under article six of the Public Officers Law or any other provision of law.

[(4) . . .]

(f) . . .

(g) . . .

(h) . . .

(i) . . .

(j) Fire and Emergency Drills. Each school district and board of cooperative educational services shall, at least once every school year, and where possible in cooperation with local county emergency preparedness plan officials, conduct one test of its [emergency plan or its] emergency response procedures under each of its building-level emergency response [school safety] plans, including sheltering, lock-down, or early dismissal, at a time not to occur more than 15 minutes earlier than the normal dismissal time.

(1)...

(2)...

(3)...

(k) . . .

(l) . . .

(m) . .

**Attachment B**

**ASSESSMENT OF PUBLIC COMMENT**

**8 NYCRR §155.17**

Since publication of a Notice of Proposed Rule Making in the State Register on June 29, 2016, the State Education Department received the following comments:

1. COMMENT:

Several commenters expressed concern that school districts would not be able to update Comprehensive District-Wide School Safety Plans and Building-Level Emergency Response Plans by September 1st of the 2016-17 school year. Commenter asked for a delay in implementation for the new requirements until the 2017-2018 school year, especially since the proposed rule will be presented for adoption at the September 13-14, 2016 Regents Meeting.

DEPARTMENT RESPONSE:

Prior to the amendments made by Part B of Chapter 54 of the Laws of 2016, Commissioner's regulation §155.17 required districts to adopt and amend district-wide and building-level plans by July 1st of each school year. Recognizing the changes made by the new law, the Department decided to delay the requirement to adopt and amend such plans to September 1, 2016. The extension was given to both provide districts with time to meet the new requirements, while at the same time ensuring compliance with the new law which requires the adoption and amendment of annual plans.

The proposed amendment was adopted by the Board of Regents at its June 2016 meeting as an emergency measure, effective July 1, 2016, in order to timely implement Part B of Chapter 54 of the Laws of 2016. A Notice of Emergency Adoption and Proposed Rule Making was published in the State Register on June 29, 2016. It is the permanent adoption of the emergency rule, which has been in effect since July 1, 2016, that will be adopted at the September 13-14, 2016 Board of Regents meeting.

2. COMMENT:

Commenter expressed confusion surrounding the definition of “lockdown” indicating that the definition was contradictory and confusing.

DEPARTMENT RESPONSE:

The definition of “lockdown” is the definition adopted by the New York State School Safety Improvement Team, as recommended by the Federal Emergency Management Agency’s Guide for Developing High-Quality School Emergency Operations Plans (2013). The term is further defined in the NYS Guide to School Emergency Response Planning Template that has been available since the 2014-2015 school year and in use since that time. A resource document about these emergency response terms is available at:

<http://www.p12.nysed.gov/sss/documents/QuickReferenceCardv102-13-15.pdf>.

Because the definition has been used by law enforcement in the past, the Department does not believe a regulatory change is needed.

3. COMMENT:

Commenters were confused by the definition and responsibilities of the, “Building-Level Emergency Response Team” in contrast with the “Emergency Response Team” and suggested clarifying language.

#### DEPARTMENT RESPONSE:

The Department understands the confusion that exists as a result of the updated terminology in Education Law §2801-a. Education Law §2801-a always required the school safety team to develop an emergency response plan. Part of the duties of the school safety team in developing the plan was to designate an emergency response team. However, the amendments to Education Law §2801-a renamed the school safety team to the building-level emergency response team. Now, the responsibility for designating the emergency response team lies with the building-level emergency response team (previously referred to as the school safety team). The changes to Commissioner’s regulation §155.17 were made to comply with the statutory amendments made by Part B of Chapter 54 of the Laws of 2016 and the Department believes no revisions are necessary.

The Emergency Response Team is designed to respond in the event of an actual emergency and is required by statute to include school personnel, law enforcement officials, fire officials, and representatives from local, regional and/or State emergency response agencies and assists the school community in responding to a violent incident or emergency.

#### 4. COMMENT:

Commenter expressed concern relating to the role of a student on a safety team. Specifically, that it does not make sense to have a student on the safety team at all if information cannot be shared or discussed. Having a student on the team is extremely valuable; this will lead to students being totally eliminated from the team as proposed.

DEPARTMENT RESPONSE:

The changes to Commissioner's regulation §155.17 were made to comply with the statutory amendments made to Education §2801-a(4), which specifically eliminated the student's access to confidential building level plans.

5. COMMENT:

How are the Emergency Response Team and the Building-Level Emergency Response Team different? These two terms are so similar that they are confusing.

DEPARTMENT RESPONSE:

See Response to Comment No. 3.

6. COMMENT:

Why is the Post-Incident Response Team selected by the Building-Level Emergency Response Team?

DEPARTMENT RESPONSE:

Education Law §2801-a(3)(b) always required the school safety team to designate the post-incident response team. Other than to reflect the new title of the Building-Level Emergency Response Team, such obligation was not changed by the statutory amendments effective on July 1, 2016 or the proposed regulation. Therefore, no revisions are necessary.

7. COMMENT:

Several commenters noted that it was unrealistic to require districts to conduct the updated annual training by September 15, 2016, and requested that the requirements be delayed to 2017.

DEPARTMENT RESPONSE:

The provisions of Part B of Chapter 54 of the Laws of 2016 took effect on July 1, 2016. The Department believes that staff should be trained on the requirements of the new statute as soon as possible after the start of the school year since the statute is already in effect and that delaying such training would appear to be contrary to the intent of the statute, which is to ensure the safety of students and staff. However, the statute does permit districts to conduct such training as part of existing professional development.

8. COMMENT:

The duties of the District Chief Emergency Officer will remove responsibility from the school building principal and will be more than any one individual can accomplish centrally.

DEPARTMENT RESPONSE:

The amendments made to Education Law §2801-a by Part B of Chapter 54 of the Laws of 2016 require the designation and outline the duties required of a District Chief Emergency Officer. The statute and implementing regulation allow the individual to be either the superintendent, or the superintendent's designee. Neither the statute nor the

implementing regulation prohibit a principal or other school building leader from being designated by the superintendent to fulfill this role.

9. COMMENT:

What changes to these regulations make to the timing of fire and emergency drills? As written, does the regulation only permit the drills to occur no more than 15 minutes earlier than normal dismissal time?

DEPARTMENT RESPONSE:

In addition to amendments to Education Law §2801-a relating to emergency response plans, Part B of Chapter 54 of the Laws of 2016 also amended Education Law §807, in relation to fire and emergency drills. Commissioner's regulation §155.17 solely relates to emergency response plans, and does not further explain the requirements of Education Law §807. Therefore such comment is outside the scope of this proposed regulation. However, the Department has issued separate guidance relating to the amendments to Education Law §807. Please see <http://www.p12.nysed.gov/sss/documents/EmergencyResponseLegRegChangesQAFinal.pdf>.

Additionally, Commissioner's regulation §155.17(j) has always required school districts to conduct at least one test of the emergency response plan each school year. The timing of these building-level emergency response plan drills remain limited to occurring not more than 15 minutes earlier than the normal dismissal time, for the purpose of minimizing the impact on instructional time. This regulation is not intended to change any of the requirements of Education Law §807.

10. COMMENT:

Commenters expressed concerns about the timeline for compliance, particularly for districts with multiple buildings. Commenters proposed dates beginning in October for the annual update to Building-Level Emergency Response Plans.

DEPARTMENT RESPONSE:

See Response to Comment #1.

11. COMMENT:

Several commenters opposed the staff training deadline of September 15, 2016, indicating that depending upon the calendar year, sometimes we do not even begin school until a week into September. Commenter proposed October 15<sup>th</sup> as an alternative date.

DEPARTMENT RESPONSE:

See Response to Comment #7.

12. COMMENT:

Commenter asked questions about the content of the required training on violence prevention and mental health, particularly relating to suicide crisis handling.

DEPARTMENT RESPONSE:

Education Law §2801-a now requires the district-wide school safety plan to include policies and procedures for responding to implied or direct threats of violence by students, teachers, other school personnel and visitors to the school, including threats by students against themselves, which includes suicide. In addition, the district-wide safety plan should include standards and procedures relating to assistance from external resources and crisis response teams in such a situation, including when they

should be utilized. To assist districts in developing these procedures, the Department has compiled a list of mental health guidance resources for school districts and educators which is available at,

<http://www.p12.nysed.gov/sss/documents/MentalHealthResourcesforEducators.pdf>.

For more information related to existing school violence prevention training please see, <http://www.p12.nysed.gov/sss/documents/SVPIRequiredComponents.pdf>.

13. COMMENT:

Several commenters asked how schools can certify that all staff have undergone the annual training.

DEPARTMENT RESPONSE:

Superintendents will be required to certify that all staff received training, and submit the name and contact information of the District Chief Emergency Officer, and the web address/URL for the District-Wide Safety Plan as part of the Basic Educational Data System (BEDS) collection beginning in October 2016. The Department has issued guidance to districts on how to comply with this statutory requirement. See <http://www.p12.nysed.gov/sss/documents/EmergencyResponseLegRegChangesQAFinal.pdf>

14. COMMENT:

Can school districts provide the annual emergency response training online?  
Does SED have a sample curriculum for such training?

DEPARTMENT RESPONSE:

The manner and method of providing the training is a decision to be made at the local level, based on the unique needs of each school district. However, the Department has compiled resources for districts to use in developing such training. A list of the required components of school violence prevention training is available at, <http://www.p12.nysed.gov/sss/documents/SVPIRequiredComponents.pdf>. Additional resources are provided in our mental health guidance for educators available here: <http://www.p12.nysed.gov/sss/documents/MentalHealthResourcesforEducators.pdf>.

15. COMMENT:

Is the "Chief Emergency Officer" in addition to the District Safety Officer? Is it a Board appointment?

DEPARTMENT RESPONSE:

The Chief Emergency Officer, which is now required by Education Law §2801-a, is defined by both the statute and the implementing regulation, §155.17(a), as either the superintendent or the superintendent's designee. Neither the prior regulations nor the proposed amendments required a district safety officer. Furthermore, pursuant to the Education Law §2801-a, and the implementing regulations, the appointment of the Chief Emergency Officer is a required component of the District-Wide School Safety Plan. As such, it is a local decision whether this role will be filled by the superintendent or his/her designee. Likewise, it is a local decision whether to delegate the responsibility to an existing staff person or to add an additional staff position to meet the requirement.

16. COMMENT:

Several commenters asked specific questions related to fire and emergency drills, and the way in which to comply with the requirements of Education Law §807. Specifically, are we now required to, in lieu of 12 fire drills, have 12 overall drills (4 lock down, and 8 evacuations)? When during the school day should these drills occur? How will we indicate that these drills included the use of secondary routes? Must law enforcement participate in each of the lock-down drills? Are a certain number of such drills required by December 31<sup>st</sup> or each year?

**DEPARTMENT RESPONSE:**

In addition to amendments to Education Law §2801-a relating to emergency response plans, Part B of Chapter 54 of the Laws of 2016 also amended Education Law §807, in relation to fire and emergency drills. Commissioner's regulation §155.17 solely relates to emergency response plans, and does not further explain the requirements of Education Law §807. Therefore such comment is outside the scope of this proposed regulation. However, the Department has issued separate guidance relating to the amendments to Education Law §807. Please see <http://www.p12.nysed.gov/sss/documents/EmergencyResponseLegRegChangesQAFinal.pdf>.

**17. COMMENT:**

For next year's fire inspection submittal, will documentation of drills and evacuation times still need to be recorded and submitted? Will this just be recording the times for the evacuation drills?

DEPARTMENT RESPONSE:

Commissioner's regulation §155.17 solely relates to emergency response plans, and does not further explain the requirements of Education Law §807, therefore such comment is outside the scope of this proposed regulation. However, the Department has issued separate guidance relating to the amendments to Education Law §807.

Please see

<http://www.p12.nysed.gov/sss/documents/EmergencyResponseLegRegChangesQAFinal.pdf>

18. COMMENT:

Please explain how the amendments removed the Commissioner's authority to provide a waiver from the requirements of this section for a two-year period for schools that had plans in substantial compliance prior to the effective date of this section. Also was this a piece of the expired Project SAVE statutory language?

DEPARTMENT RESPONSE:

Education Law §2801-a, and Commissioner's regulation §155.17(e)(4) previously contained a provision permitting the Commissioner to waive the school safety plan requirements for schools that had a plan in place prior to the original enactment in 2000, for a period of up to two years from July 24, 2000. This provision was removed from the regulation because it was an expired piece of the SAVE legislation. (Chapter 181 of the Laws of 2000).

19. COMMENT:

Several commenters asked if school districts now required switching their Building-Level Emergency Response Plans to the Building-Level Emergency Response Plan Template. Commenters also asked for a delay in the required use of the template.

DEPARTMENT RESPONSE:

Beginning with the 2016-17 school year, schools are required to use the Building-Level Emergency Response Plan Template which was developed and distributed by the New York State School Safety Improvement Team. The template was shared with districts during statewide regional meetings that occurred during the 2014-15 school year. The template has been publicly available and requires that schools provide essential information, in a standard predefined format. The use of a standardized format for collecting this information is the best way to ensure that police and other first responders have immediate access to this information if an emergency situation does occur in a school. The template is available to school staff at: <https://safeschools.ny.gov/>. Schools may include supplemental information beyond what is required by the template as an attachment to the copy of the plan that is kept in the school. Since the statute became effective on July 1, 2016, the Department does not believe that an extension is warranted.

20. COMMENT:

Several commenters asked what terminology is required in new Emergency Response Plan Template and do districts have flexibility to modify based on local law enforcement partnerships and recommendations? The current definition of lock-down is confusing and vague. For example, can districts replace terms like “lock-out” with

another term, since the term “lock-out” is often confused with “lock-down” by many employees?

DEPARTMENT RESPONSE:

The Building-Level Emergency Response Plan Template which was developed by the New York State School Safety Improvement Team adopted standardized Federal Emergency Management Agency (FEMA) language, which includes specific definitions of vital emergency terms. Using the standardized terms and definitions for Shelter-In-Place, Hold-In-Place, Evacuate, Lock-Out, and Lock-Down will improve and streamline how emergencies are communicated to staff, students, and parents so they can react appropriately, and in a timely fashion. The terminology used in the Building-Level Emergency Response Plan Template must be used by all schools in the 2016-17 school year. The Building-Level Emergency Response Plan Template is available at:

<https://safeschools.ny.gov/>. [Additional information about emergency response terms is available at: http://www.p12.nysed.gov/sss/documents/QuickReferenceCardv102-13-](http://www.p12.nysed.gov/sss/documents/QuickReferenceCardv102-13-15.pdf)

[15.pdf](http://www.p12.nysed.gov/sss/documents/QuickReferenceCardv102-13-15.pdf). Since the terminology used in the template is outside the scope of the proposed amendment, the Department does not believe regulatory revisions are needed. See also Response to Comment No. 2.

21. COMMENT:

How will districts submit plan updates for the 2016-2017 school year? When will the portal be ready to submit emergency response plans?

DEPARTMENT RESPONSE:

Beginning in the fall of 2016, schools will have the ability to electronically submit Building-Level Emergency Response Plans to the New York State Police via the New

York State Education Department's Business Portal. Automated collection of Building-Level Emergency Response Plans will allow the New York State Police to distribute the plans to troopers and other law enforcement in a consistent and comprehensive manner statewide. Electronic submission of Building-Level Emergency Response Plans will be optional for the 2016-17 school year. However all schools are encouraged to use the new application. All schools must continue to share their emergency response plans with local law enforcement for the 2016-17 school year.

22. COMMENT:

Must the Building-Level Emergency Response Team, Emergency Response Team, and Post-Incident Response Team include a representative from a fire department, even in districts with only volunteer fire departments?

DEPARTMENT RESPONSE:

Part B of Chapter 54 of the Laws of 2016 amended Education Law §2801-a to explicitly include fire officials as required members of the Building-Level Emergency Response Team and the Emergency Response Team. Commissioner's regulation §155.17 was amended accordingly to comply with the statutory amendments. It is a local decision as to which fire officials to include on the teams.

23. COMMENT:

Who is required to receive the annual training on the Emergency Response Plan, violence prevention, and mental health?

DEPARTMENT RESPONSE:

Education Law §2801-a has always required schools to provide school safety training to students and staff. Part B of Chapter 54 of the Laws of 2016 amended

Education Law §2801-a to require districts to now certify that all staff receive such training, which shall include components on violence prevention and mental health. Commissioner's regulation §155.17 was amended accordingly to comply with the statutory amendments.

24. COMMENT:

Are we required to conduct lock-down, lock-out and shelter-in-place drills?

DEPARTMENT RESPONSE:

In addition to amendments to Education Law §2801-a relating to emergency response plans, Part B of Chapter 54 of the Laws of 2016 also amended Education Law §807, in relation to fire and emergency drills. Commissioner's regulation §155.17 solely relates to drills of the emergency response plans, and does not further explain the requirements of Education Law §807 and the type of drills necessary to comply with such statute. Therefore, such comment is outside the scope of this proposed regulation. However, the Department has issued separate guidance relating to the amendments to Education Law §807. Please see <http://www.p12.nysed.gov/sss/documents/EmergencyResponseLegRegChangesQAFinal.pdf>

25. COMMENT:

Commenter expressed frustration that the required use of the Building-Level Emergency Response Plan Template was not included within the regulation.

DEPARTMENT RESPONSE:

Education Law §2801-a and the implementing regulations continue to provide the Commissioner with the authority to prescribe the form and manner of the plans, in

consultation with the Division of Criminal Justice Services. The Building-Level Emergency Response Plan Template was developed and distributed by the New York State School Safety Improvement Team (which included representatives from the Division of Criminal Justice Services). The template was shared with districts during statewide regional meetings that occurred during the 2014-15 school year. The template has been publicly available and requires that schools provide essential information, in a standard predefined format. The use of a standardized format for collecting this information is the best way to ensure that police and other first responders have immediate access to this information if an emergency situation does occur in a school. The template is available to school staff at: <https://safeschools.ny.gov/>. Schools may include supplemental information beyond what is required by the template as an attachment to the copy of the plan that is kept in the school.

26. COMMENT:

Commenter sought clarification on the training required for all staff, seeking clarification that the staff need only be trained on the applicable elements of the District-Wide School Safety Plans.

DEPARTMENT RESPONSE:

See Response to Comment No. 23. In addition, while Education Law §2801-a requires the training to include training on the emergency response plan, and school violence prevention and mental health, neither the statute nor the implementing regulation prohibit district's from tailoring the training to meet their unique needs. 27.

COMMENT:

Commenter expressed apprehension about the amendments to Commissioner's regulation §155.17(j) which amended the requirement of drills of the Emergency-Response Plan to include lock-down in the list of the types of drills. Commenter indicated that this language could be interpreted that a district only has to conduct either a sheltering, lock-down, or early dismissal and not also fulfill the newly amended requirements of Education Law §807. Commenter was also concerned that the section would limit a school's ability to conduct lock-down drills to the last 15 minutes of a school day and suggested including a cross reference to the fire and emergency drill requirements of Education Law §807.

**DEPARTMENT RESPONSE:**

Commissioner's regulation §155.17(j) only relates to the drills of the Building-Level Emergency Response Plan, and does not limit lock-down drills conducted pursuant to the requirements of Education Law §807 to 15 minutes prior to the end of the school day. Therefore, no revisions are necessary.

**28. COMMENT:**

Several commenters sought the inclusion of language from Education Law §2801-a which authorizes the Commissioner, in conjunction with the State Police, to develop an appeals process from duplicative requirements of District-Wide School Safety Plans for single building school districts.

**DEPARTMENT RESPONSE:**

The provisions of Part B of Chapter 54 of the Laws of 2016 which amended Education Law §2801-a, authorized the Commissioner, in consultation with the Superintendent of the State Police to develop an appeals process. The statute did not require the development of the appeals process. After consulting with the New York State Police, it was determined that no appeals process would be developed at this time.

29. COMMENT:

One commenter opposed the annual staff training deadline of September 15<sup>th</sup>. The commenter expressed the opinion that such date is contrary to the intent of Part B of Chapter 54 of the Laws of 2016 which does not specify a date by which the training must occur. Commenter indicated that legislative negotiations resulted in the intentional omission of a date. Commenter suggested that the certification of completion of the training be left to local discretion.

DEPARTMENT RESPONSE:

The Department cannot opine on the legislative intent or internal discussions that may have occurred surrounding the date by which school district must complete the required annual staff training. Consistent with the authority provided by the statute, the proposed regulation imposes a date certain by which all school districts statewide must comply with the statutory requirement, in an effort to ensure that all staff are appropriately trained on the new safety requirements at the start of the school year, the Department believes this is a reasonable date to ensure the safety of the school community.

30. COMMENT:

Commenter seeks clarification relating to the timeline for providing training for employees hired after the start of the school year. Commenter suggests that the regulation be clarified to state that the training must be conducted within 30 days after the employee officially begins reporting for duty, or as part of the district's existing new hire program.

**DEPARTMENT RESPONSE:**

In accordance with the statutory language of Part B of Chapter 54 of the Laws of 2016, the proposed regulation requires the training to be provided to employees who are hired after the start of the school year within 30 days of such hire, or as part of the district's existing new hire training program, whichever is sooner. Since this is a statutory requirement, no revisions are necessary.

**31. COMMENT:**

Commenter expressed concern that the proposed regulation includes within the duties of the Chief Emergency Officer to, "assist in the selection of security related technology and development of policies for the use of such technology." Commenter recommends that the word "procedure" replace "policy" to avoid a statewide policy mandate and to ensure that the duties of creating the procedures are properly within the purview of the superintendent, and do not require approval of the board of education.

**DEPARTMENT RESPONSE:**

The Department has revised the regulation to clarify such point.

**31. COMMENT:**

Is a board of education required to formally approve the building level emergency response plans? There is some confusion in the field relating to the provisions in the

statutory language and the implementing regulations which require that a board of education adopt the about Building-Level Emergency Response Plan while at the same time maintaining its confidentiality.

**DEPARTMENT RESPONSE:**

Education Law §2801-a(1) specifically requires that a board of education adopt a District-Wide School Safety Plan and a Building-Level Emergency Response Plan. Education Law §2801-a(3) requires all Building-Level Emergency Response Plans to be kept confidential and not disclosed except to authorized individuals. In addition, Education Law §2801-a(7) requires the building-level emergency response plans to be kept confidential and shall not be subject to disclosure under Article 6 of the Public Officers Law or any other provision of law. The proposed amendment implements these statutory requirements and therefore no revisions are needed. Districts should consult with their local attorneys as to how to comply with the new law and regulations. However, please note that Public Officers Law, Article 7, Section 105(a) (Open Meetings Law) provides that matters which will imperil the public safety if disclosed are allowed to be approved through Executive Session. Given that revealing the contents of building-level emergency response plans could imperil the safety of staff and students if disclosed, a board of education may be able to approve these plans in Executive Session in order to maintain their confidentiality and meet the requirements of the new law.