



THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK / ALBANY, NY 12234

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

**FROM:** Cosimo Tangorra, Jr. *Cosimo Tangorra Jr.*

**SUBJECT:** Proposed Addition of Section 136.6 of the Commissioner's Regulations, Relating to School Use of Epinephrine Auto Injectors

**DATE:** March 9, 2015

**AUTHORIZATION(S):**

*Richard A. Trentacosta*

*Elizabeth R. Berlin*

## SUMMARY

### Issue for Decision (Consent Agenda)

Should the Board of Regents add a new section 136.6 of the Commissioner's Regulations to prescribe standards for the provision, maintenance and use of epinephrine auto-injectors by school districts, boards of cooperative educational services (BOCES), county vocational education and extension boards, charter schools, and non-public elementary and secondary schools?

### Reason(s) for Consideration

Required by statute (Chapter 424 of the Laws of 2014).

### Proposed Handling

The proposed amendment is being presented to the Full Board for adoption as a permanent rule at the March 2015 Regents meeting.

### Procedural History

The proposed amendment was discussed by the P-12 Education Committee and adopted as an emergency rule at the February 2015 Regents meeting, effective February 27, 2015. A Notice of Proposed Rule Making was published in the State

Register on January 7, 2015. A copy of the proposed amendment and an Assessment of Public Comment are attached. Supporting materials are available upon request from the Secretary to the Board of Regents.

### **Background Information**

Chapter 424 of the Laws of 2014 added a new section 921 to the Education Law, effective February 27, 2014, to permit school districts, BOCES, county vocational education and extension boards, charter schools, and non-public elementary and secondary schools, or any person employed by any such entity, to administer epinephrine auto-injectors in the event of an emergency pursuant to the requirements of Public Health Law section 3000-c. The statute also provides that such entities may provide and maintain on-site in each instructional school facility epinephrine auto-injectors in quantities and types deemed by the Commissioner, in consultation with the Commissioner of Health, to be adequate to ensure ready and appropriate access for use during emergencies to any student or staff having anaphylactic symptoms whether or not there is a previous history of severe allergic reaction.

The proposed rule prescribes standards for the provision, maintenance and use of epinephrine auto-injectors pursuant to Education Law section 921, so as to ensure ready and appropriate access for use during emergencies to any student or staff having anaphylactic symptoms pursuant to the requirements of Public Health Law section 3000-c.

### **Recommendation**

Staff recommends that the Regents take the following action:

VOTED: That section 136.6 of the Regulations of the Commissioner is added, as submitted, effective April 1, 2015.

### **Timetable for Implementation**

The proposed amendment was adopted as an emergency rule at the February Regents meeting, effective February 27, 2015. If adopted at the March 2015 Regents meeting, the permanent rule will take effect on April 1, 2015.

## AMENDMENT OF THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to Education Law sections 207, 305 and 921 and Chapter 424 of the Laws of 2014

Section 136.6 of the Regulations of the Commissioner of Education is added, effective April 1, 2015, as follows:

### §136.6 Authorized Use of Epinephrine Auto-Injector

(a) Definitions. As used in this section:

(1) Epinephrine auto-injector means an automated injection delivery device, approved by the United States Food and Drug Administration, for injecting a measured dose of the drug epinephrine.

(2) Trained school personnel means any person employed by a school district, board of cooperative educational services, county vocational education and extension board, charter school or non-public elementary and secondary school, including but not limited to, health professionals who have successfully completed a training course in the use of epinephrine auto-injector devices approved by the Department of Health pursuant to Public Health Law section 3000-c.

(3) Collaborative agreement means a written agreement with an emergency health care provider pursuant to Public Health Law section 3000-c that incorporates written practice protocols, and policies and procedures that shall ensure compliance with the provisions of Public Health Law section 3000-c.

(4) Emergency health care provider means: (i) a physician with knowledge and experience in the delivery of emergency care; or (ii) a hospital licensed under Article 28 of the Public Health Law that provides emergency care.

(5) Regional Council means a regional emergency medical services council established pursuant to Public Health Law section 3003.

(6) Instructional school facility means a building or other facility maintained by a school district, board of cooperative educational services, a county vocational education and extension board, charter school, or non-public elementary and secondary school where instruction is provided to students pursuant to its curriculum.

(b) Each school district, board of cooperative educational services, county vocational education and extension board, charter school, and non-public elementary and secondary school may provide and maintain on-site in each instructional school facility epinephrine auto-injectors for use during emergencies in accordance with Public Health Law section 3000-c. Each such facility shall have sufficient epinephrine auto-injectors available to ensure ready and appropriate access for use during emergencies to any student or staff having symptoms of anaphylaxis whether or not there is a previous history of severe allergic reaction. In determining the quantity and placement of epinephrine auto-injectors in collaboration with the emergency health care provider, consideration shall be given to:

(1) the number of students, staff and other individuals that are customarily or reasonably anticipated to be within such facility; and

(2) the physical layout of the facility, including but not limited to:

(i) location of stairways and elevators;

(ii) number of floors in the facility;

(iii) location of classrooms and other areas of the facility where large congregations of individuals may occur; and

(iv) any other unique design features of the facility.

(c) The school district, board of cooperative educational services, county vocational education and extension board, charter school, or non-public elementary and secondary school shall file a copy of the collaborative agreement with the appropriate Regional Council. Trained school personnel shall not administer an epinephrine auto-injector in accordance with Public Health Law 3000-c prior to the filing of the collaborative agreement with the Regional Council.

(d) In the event of an emergency, trained school personnel may administer an epinephrine auto-injector to any student or school personnel having symptoms of anaphylaxis in an instructional school facility, whether or not there is a previous history of severe allergic reaction pursuant to Public Health Law section 3000-c.

(e) Every use of an epinephrine auto-injector device pursuant to this section and Public Health Law section 3000-c shall immediately be reported to the emergency health care provider.

## **8 NYCRR §136.6**

### **ASSESSMENT OF PUBLIC COMMENT**

Since publication of a Notice of Proposed Rule Making in the State Register on January 7, 2015, the State Education Department received the following comments:

#### **1. COMMENT:**

Mandating a specific training program before permitting someone from administering emergency medication, WILL have a monetary effect on districts because it will mean that school functions, sports and trips will require a trained person (of which there will be very few voluntarily trained people for at least the early years of this ruling) meaning that districts will need to send a nurse to fill the training requirement, and not the willing parent or trained volunteer as is now allowed.

#### **DEPARTMENT RESPONSE:**

Pursuant to the statute, this regulation is merely permissive and now allows school districts, board of cooperative educational services, county vocational education and extension boards, charter schools, and non-public elementary and secondary schools to provide and maintain on-site in each instructional school facility epinephrine auto-injectors for use during emergencies in accordance with Public Health Law section 3000-c. If a school chooses to participate and provides epinephrine pursuant to a collaborative agreement for use during emergencies, the regulation, in conformance with the statute, requires that personnel be properly trained by completing a course approved by the Department of Health prior to administration in an emergency situation. The proposed training course will be available online at no cost to schools for those who

choose to provide and maintain epinephrine auto-injectors on-site in instructional school facilities.

## 2. COMMENT:

The proposed rule will require that many individuals be trained for diverse situations. For example, a physical education teacher may be trained because he is a coach, but he will not be accompanying a group on a social studies field trip. The social studies trip will then require another person to be trained. Schools will probably end up not having field trips in order to comply. It is also possible that students will not mention their allergic condition if they feel they could be disqualified from attending an event or preventing their classmates from doing so. This could have devastating consequences.

## DEPARTMENT RESPONSE:

Both the statute and regulation govern the provision of epinephrine auto-injectors on-site in instructional school facilities. Instructional school facility is defined by the regulation to only include those buildings or other facilities maintained by a school district, board of cooperative educational services, a county vocational education and extension board, charter school, or non-public elementary and secondary school where instruction is provided to students pursuant to its curriculum. Therefore, the situations described above would not be impacted by this rule allowing for the provision of epinephrine auto-injectors. Additionally the current State Education Department policy that permits certain licensed health professionals to train an unlicensed person to administer epinephrine via auto-injector to a student with a health care provider order for such, will continue to be permitted.