



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

**FROM:** Elizabeth R. Berlin

**SUBJECT:** Proposed Amendments to Sections 100.2(hh), 200.7, 200.20 and Subpart 57-1 of the Regulations of the Commissioner of Education Relating to Reports of Child Abuse in an Educational Setting

**DATE:** September 26, 2019

**AUTHORIZATION(S):** *Sharon L. Tabor* *Elizabeth R. Berlin*

## SUMMARY

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

Should the Board of Regents adopt, as a permanent rule, the amendments to Sections 100.2(hh), 200.7, 200.20, and Subpart 57-1 of the Commissioner's Regulations to implement the provisions of Chapter 363 of the Laws of 2018 relating to reports of child abuse in an educational setting?

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

Required by Statute (Chapter 363 of the Laws of 2018).

### **Proposed Handling**

The proposed amendment is being presented to the Full Board for adoption as a permanent rule at the October 2019 meeting of the Board of Regents. A copy of the proposed amendment is included as Attachment A.

### **Procedural History**

A Notice of Proposed Rule Making was published in the State Register on June 26, 2019. Supporting materials are available upon request from the Secretary to the Board of Regents. Following the 60-day public comment period required under the State Administrative Procedure Act, the Department received one comment on the proposed

amendments which does not necessitate further revisions to the item (A copy of the Assessment of Public Comment is included as Attachment B).

### **Background Information**

Article 23-B of the Education Law was enacted in 2001 and required certain school employees to report allegations of child abuse in an educational setting. The law also required the Commissioner to promulgate rules and regulations for the training necessary for the implementation of Article 23-B. Presently, Commissioner's Regulation §100.2(hh) establishes the training in the reporting of child abuse in an educational setting required for school districts, charter schools, and BOCES.

Chapter 363 of the Laws of 2018 specifically amended the provisions of Article 23-B of the Education Law to expand the individuals, and the educational settings in which they work, who are required to make a report of child abuse in an educational setting and to complete training surrounding such obligations. Specifically:

- Education Law §1125 was amended to expand the definitions of child, employee, volunteer, educational setting, and administrator within Article 23-B to include all public schools, school districts, charter schools, nonpublic schools, boards of cooperative educational services (BOCES), approved preschool special education programs (4410s), state-operated and state-supported schools (4201s), approved private residential and non-residential schools for the education of students with disabilities including 853s, and Special Act School Districts. The law was also amended to expand the definitions of employee and volunteer to include individuals who receive compensation from or provide services to bus companies that contract with such schools to provide transportation services to children.
- Education Law §1126 was amended to expand the responsibility to report allegations of child abuse to include licensed and registered physical therapists, licensed and registered occupational therapists, licensed and registered speech-language pathologists, teacher aides, school resource officers, school bus drivers, and school bus driver supervisors.
- Education Law §1132 was amended to expand the components which must be included in the training on reporting allegations of child abuse pursuant to Article 23-B.
- Education Law §1132 was further amended to require that all teachers and administrators, other than those in a school district or public school, and all school bus drivers employed on or after July 1, 2019 complete two hours of coursework or training regarding the identification and reporting of child abuse and maltreatment as defined in Social Services law.

Commissioner's Regulation §100.2(hh) presently contains the required components of training in the reporting of child abuse in an educational setting. The proposed amendments expand the individuals, and the educational settings in which they work, who are required to receive this ongoing training as required by Section (7) of Chapter 363 of the Laws of 2018. Chapter 363 of the Laws of 2018 also expanded the required components of

the training of identification of child abuse in an educational setting to now include information regarding the physical and behavioral indicators of child abuse and maltreatment and the statutory reporting requirements established by Social Services law Sections 413 through 420. The proposed amendment makes such conforming changes to §100.2(hh).

Additionally, the proposed amendments add a new paragraph (4) to §100.2(hh) to comply with Section (8) of Chapter 363 of the Laws of 2018 to further require that all persons employed on or after July 1, 2019 by a school other than a school district or public school, in titles equivalent to a teacher (e.g., as enumerated in Section 80-3.2 of the Commissioner's Regulations) or in a title equivalent to an administrator (e.g., the educational leadership service titles as defined in Section 80-3.10 of the Commissioner's Regulations), and any school bus driver employed by any person or entity that contracts with a school to provide transportation services to children must complete two hours of coursework or training regarding the identification and reporting of child abuse and maltreatment.

The proposed amendment is necessary to implement the statutory changes required by Chapter 363 of the Laws of 2018 and to ensure that the necessary individuals receive the appropriate training in the identification of child abuse in an educational setting and training in the identification of child abuse and maltreatment within the meaning of the statute.

Since the publication of the proposed rule in the State Register, Chapter 164 of the Laws of 2019 was passed and became a law on August 13, 2019. This chapter law made amendments to Chapter 363 of the Laws of 2018 to clarify that school bus drivers employed by a *school* or a person or entity that contracts with a school are required to report allegations of child abuse in an educational setting and are required to complete training surrounding such obligations as well. Consequently, non-substantive revisions were made as follows:

Sections 100.2(hh)(2)(ii) and 100.2(hh)(4) of the proposed amendment were amended to add the word "school" before person or entity, to clarify that the reporting obligations apply to school bus drivers employed by a school as well as those employed by any person or entity. These changes were made to conform the proposed regulation to Chapter 164 of the Laws of 2019.

### **Related Regents Items**

[Proposed Amendments to Sections 100.2\(hh\) and 200.7, and Subpart 57-1 of the Regulations of the Commissioner of Education Relating to Reports of Child Abuse in an Educational Setting](#)

(<http://www.regents.nysed.gov/common/regents/files/619p12d1.pdf>)

**Recommendation**

VOTED: That Sections 100.2(hh), 200.7, 200.20, and Subpart 57-1 of the Regulations of the Commissioner of Education be amended, as submitted, effective October 23, 2019.

**Timetable for Implementation**

If adopted at the October 2019 Regents meeting, the proposed amendment will become effective as a permanent rule on October 23, 2019.

**Attachment A**

AMENDMENT OF THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to Education Law sections 101, 207, 305, 1125, 1126 1128, 1132, 3028-b and Chapter 363 of the Laws of 2018.

1. Subparagraph (iii) of paragraph (1) of subdivision (hh) of section 100.2 of the Regulations of the Commissioner of Education is amended, as follows:

(iii) additional duties of school administrators and superintendents pursuant to Education Law section 1128-a.

2. Paragraph (2) of subdivision (hh) of section 100.2 of the Regulations of the Commissioner of Education is amended and new paragraphs (3) and (4) shall be added to subdivision (hh) of section 100.2 of the Regulations of the Commissioner of Education as follows:

(2) Training in reporting of child abuse in an educational setting.

(i) For purposes of this paragraph, school shall include a school district, public school, charter school, nonpublic school, board of cooperative educational services, special act school district as defined in Education Law section 4001, approved preschool special education programs pursuant to Education Law section 4410, approved private residential or non-residential schools for the education of students with disabilities including private schools established under Chapter 853 of the Laws of 1976 or State operated or State supported schools in accordance with Articles 85, 87 or 88 of the Education Law.

(ii) Each school [district, each charter school and each board of cooperative educational services] shall establish, and implement on an ongoing basis, a training program regarding the procedures set forth in article 23-B of the Education Law for all current and new teachers, school nurses, school counselors, school psychologists, school social workers, school administrators, other personnel required to hold a teaching or administrative certificate or license, and all persons employed in equivalent titles in a nonpublic school, special act school district as defined in Education Law §4100, approved preschool special education program pursuant to Education Law §4410, approved private residential or non-residential school for the education of students with disabilities including private schools established under chapter 853 of the laws of 1976, or state-operated or state-supported schools in accordance with Education Law articles eighty-five, eighty-seven or eighty-eight, and any school bus driver or supervisor employed by any school or person or entity that contracts with such school to provide transportation services to children, [and] school board members, licensed and registered physical therapists, licensed and registered occupational therapists, licensed and registered speech-language pathologists, teacher aides, and school resource officers.

[(ii)] (iii) Such program shall include, but is not limited to, training regarding:

(a) the duties of employees specifically enumerated in Education Law, section 1126 upon receipt of an allegation of child abuse in an educational setting, including when and how a report must be made, and what other actions the employee is mandated or authorized to take;

(b) confidentiality of records pursuant to Education Law, section 1127;

(c) duties of school administrators and superintendents upon receipt of a report pursuant to Education Law, section 1128, and the additional duties of superintendents pursuant to Education Law, section 1128-a;

(d) penalties for failure to report and comply pursuant to Education Law, section 1129;

(e) notification by a district attorney pursuant to Education Law, section 1130, and actions taken upon criminal conviction of a licensed or certified school employee pursuant to Education Law, section 1131; and

(f) the prohibition set forth in Education Law, section 1133 with respect to an unreported resignation or voluntary suspension of an employee or volunteer against whom an allegation of child abuse in an educational setting is made[.];

(g) information regarding the physical and behavioral indicators of child abuse and maltreatment;

(h) the statutory requirements for reporting child abuse and maltreatment as set forth in Social Services Law sections 413 through 420, including when and how a report must be made, what other actions the reporter is mandated or authorized to take, the legal protections afforded reporters, and the consequences for failure to report.

(3) Each school shall annually provide to each teacher and all other school officials a written explanation pursuant to section 3028-b of the Education Law concerning the reporting of child abuse in an educational setting, including the immunity provisions of Education Law, section 1126.

(4) For all persons employed on or after July 1, 2019 by a school other than a school district or public school, in titles equivalent to a teacher (e.g., as enumerated in section 80-3.2 of this Title) or in a title equivalent to an administrator (e.g., the educational leadership

service titles as defined in section 80-3.10 of this Title), and any school bus driver employed by any school or person or entity that contracts with a school to provide transportation services to children shall be required to complete two hours of coursework or training regarding the identification and reporting of child abuse and maltreatment.

(i) Such program shall be obtained from an institution or provider that has been approved by the Department in accordance with the provisions of Part 57 of this Title to provide such coursework or training and shall include, but not be limited to, training regarding:

(a) the physical and behavioral indicators of child abuse and maltreatment; and

(b) the statutory reporting requirements set forth in Social Services Law sections 413 through 420, including, but not limited to:

(i) when and how a report must be made;

(ii) what other actions the reporter is mandated or authorized to take;

(iii) the legal protections afforded reporters; and

(iv) the consequences for failing to report.

(ii) Proof of completion of training. Each employee required to complete such training shall provide the school administrator of the school with documentation showing that he or she completed the required training by the later of July 1, 2020 or within 30 days of employment. In addition, each school bus driver shall provide such contracting person or entity with documentation showing that he or she completed the required training. The Department is authorized to request such records on a periodic basis and may publish a list of any persons or schools who are not in compliance with this subdivision on its website.



(iii) The coursework or training required by this paragraph shall not apply to those persons already required to undergo coursework or training regarding the identification and reporting of child abuse and maltreatment pursuant to sections three thousand three and three thousand four of the Education Law.

3. Section 57-1.1 of the Regulations of the Commissioner of Education is amended, as follows:

Subpart 57-1.1 Definition.

As used in this Subpart, a provider shall mean any teachers' or coaches' or professional organization or association, school district, institution of higher education, hospital, health care facility, government agency or office, social service agency, or employer of licensed professionals or of licensed or certified teachers or of coaches, approved by the department to offer coursework or training in the identification and reporting of child abuse and maltreatment, pursuant to sections 1132(3), 3003(4), 3004, 3007, 3036, 5003 and, 6507(3)(a) of the Education Law.

4. Subdivision (a) of section 57-1.4 of the Regulations of the Commissioner of Education is amended, as follows:

(a) Pursuant to the requirements of sections 1132(3), 3003(4), 3004, 3007, 5003, and 6507(3)(a) of the Education Law, a provider, at a minimum, shall offer the syllabus prepared by the department. However, nothing in this section shall preclude providers from offering additional coursework or training which exceeds, or expands upon, the two hour syllabus prescribed by the department.

5. A new paragraph (9) of subdivision (b) of section 200.7 of the Regulations of the Commissioner of Education is added as follows:

(9) Reporting of child abuse in an educational setting. Schools governed by this section shall comply with the requirements relating to reporting and training relating to child abuse in an educational setting set forth in Article 23-B of the Education Law and child abuse and maltreatment as set forth in Social Services Law 413 through 420 and section 100.2(hh) of this Title.

6. The opening paragraph of subdivision (a) of section 200.20 of the Regulations of the Commissioner of Education is amended as follows:

(a) The approval and operation of preschool programs for preschool students with disabilities shall be conducted in a manner consistent with section 200.7(a)(1) through (3) and (b)(3), (5) [and], (6), (8) and (9) of this Part, except that the following requirements shall apply...

**ASSESSMENT OF PUBLIC COMMENT**

**COMMENT:**

A commenter states that the proposed regulation should be amended to include the definition of “educational setting” consistent with Chapter 363 of the Laws of 2018. The commenter explains that the inclusion of a definition of educational setting in regulations is critically important. School vehicles are a location, where reporting of instances of child abuse is mandated. The proposed regulations revised the definition of schools, but this is not a sufficient change to capture that vehicles operated by school districts are also places, where unfortunately, abuses occur and as such must be reported.

**DEPARTMENT RESPONSE:**

Educational setting is defined in Education Law §1126(5). Therefore, the Department has determined that no change is necessary based on this comment.