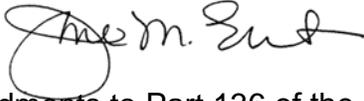




THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK / ALBANY, NY 12234

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

**FROM:** Jhone M. Ebert 

**SUBJECT:** Proposed Amendments to Part 136 of the Commissioner's Regulations Relating to School Health Services

**DATE:** July 6, 2017

**AUTHORIZATION(S):**  

### SUMMARY

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

Should the Board of Regents adopt the proposed amendments to Part 136 of the Commissioner's Regulations relating to school health services?

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

Required by State Statute (Chapter 373 of the Laws of 2016) and Review of Policy.

#### **Proposed Handling**

The proposed rule is being presented to the Full Board for adoption at the July 2017 Regents meeting. A copy of the proposed amendment is included as Attachment A.

#### **Procedural History**

At its January 2017 meeting, the Board of Regents discussed the proposed amendment. A Notice of Proposed Rule Making was published in the State Register on January 25, 2017. Following the initial 45-day public comment period required under the State Administrative Procedure Act, the Department received approximately 23 individual comments. After further review of the proposed regulation and in an effort to address the feedback received during the public comment period, additional revisions were proposed. A Notice of Revised Rule Making was published in the State Register on May 24, 2017. Following the 30-day public comment period required for a revised rulemaking under the

State Administrative Procedure Act, no public comments were received on the revised rulemaking.

### **Background Information**

Part 136 of the Commissioner's regulations sets forth the parameters for health services in schools. The Office of Student Support Services works closely with the New York State Department of Health and the New York State Center for School Health to implement these regulations. However, over time, the language surrounding best practices in health care has changed, but the regulations have not kept pace with these changes. The proposed amendments seek to address numerous requests from the field, including parents, healthcare providers, schools, and the New York State Department of Health, for technical amendments and updates to existing regulatory language to improve school health services for students.

The proposed amendments to §136.1, §136.2, and §136.3 were scheduled to take effect on July 1, 2017. However, in response to public comment, the Department amended the effective date to delay these amendments until July 1, 2018 to enable adequate time for schools, parents, and health care providers to work together to implement the amendments.

### **Related Regents Items**

<https://www.regents.nysed.gov/common/regents/files/617brca10.pdf>

<http://www.regents.nysed.gov/common/regents/files/517p12d1.pdf>

<https://www.regents.nysed.gov/common/regents/files/317p12a3.pdf>

<http://www.regents.nysed.gov/common/regents/files/117p12d1.pdf>

<http://www.regents.nysed.gov/common/regents/files/215p12a2.pdf>

<http://www.regents.nysed.gov/common/regents/files/meetings/Mar%202015/315brca5.pdf>

### **Recommendation**

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

VOTED: That sections 136.1, 136.2, and 136.3 of the Commissioner's Regulations be amended, as submitted, effective July 1, 2018, and that section 136.6 of the Commissioner's Regulations be amended, as submitted, effective August 2, 2017.

### **Timetable for Implementation**

If adopted at the July meeting, the proposed amendments to sections 136.1, 136.2, and 136.3 of the Commissioner's Regulations will become effective on July 1, 2018. However, in accordance with the provisions of Chapter 373 of the Laws of 2016, the proposed amendments to §136.6, related to epinephrine auto-injector devices, will become effective on August 2, 2017.

AMENDMENT OF THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to Education Law sections 101, 207, 305, 901,902, 903, 904, 905, 906, 911, 914, 921, 3208, Public Health Law section 2164, Chapter 58 of the Laws of 2006, Chapter 57 of the Laws of 2013, and Chapter 373 of the Laws of 2016.

1. Section 136.6 of the Regulations of the Commissioner of Education is amended, effective August 2, 2017, as follows:

(a) Definitions. As used in this section:

(1) Epinephrine auto-injector device means [an automated injection delivery device, approved by the United States Food and Drug Administration, for injecting a measured dose of the drug epinephrine] a single-use device used for the automatic injection of a premeasured dose of epinephrine into the human body for the purpose of emergency treatment of a person appearing to experience anaphylactic symptoms approved by the United States Food and Drug Administration.

(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)] (3) 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)] (c) In the event of an emergency, trained school personnel or school personnel directed in a specific instance to use an epinephrine auto-injector device by a health care practitioner as defined in Public Health Law section 3000-c, 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.]

2. Section 136.1 of the Regulations of the Commissioner of Education is amended, effective July 1, 2018, as follows:

§136.1 Definitions.

Definitions as used in this Part:

(a) School personnel means persons employed by school authorities in conducting the schools.

(b) Health professionals means persons duly licensed or otherwise authorized to practice a health profession pursuant to applicable law, including, but not limited to, physicians, registered professional nurses, nurse practitioners, physicians assistants, optometrists, dentists, dental hygienists, dietitians and nutritionists, and audiologists.

(c) School nurse means a registered professional nurse.

(d) Director of school health service means a qualified physician, or a nurse practitioner to the extent authorized by article 139 of the Education Law and consistent with [the] a written practice agreement, to the extent required, pursuant to Education Law, section 6902(3), who is duly licensed pursuant to applicable law, and who is employed by the school district to perform any duties conferred on the school physician or school medical inspector under any provision of law, to perform and coordinate the provision of health services in the public schools, and to provide health appraisals of students attending the public schools in the city or district.

(e) School health services shall mean the several procedures, including, but not limited to, medical examinations, dental inspection and/or screening, scoliosis screening, vision screening and audiometer tests, designed to determine the health status of the student; to inform parents or other persons in parental relation to the student, pupils and teachers of the individual student's health condition subject to Federal and State confidentiality laws; to guide parents, students and teachers in procedures for preventing and correcting defects and diseases; to instruct the school personnel in procedures to take in case of accident or illness; to survey and make necessary recommendations

concerning the health and safety aspects of school facilities and the provision of health information.

(f) Treatment [means correction of physical defects or other health problems] includes but is not limited to the efforts to cure, care, ameliorate, manage or prevent diseases, disorders or injuries in need of attention wherein the student, for the most part, is a passive recipient.

(g) Commencement of the school year shall mean the first day of the school year in which students are in attendance.

(h) Thirty days or 90 days shall mean, respectively, 30 calendar days or 90 calendar days.

(i) Health certificate shall mean a health examination recorded on a form prescribed by the Commissioner, describing the health condition of a student when the health examination was made and whether or not the student is in fit condition to permit his or her attendance at the public schools in accordance with the provisions of subdivision (c) of section 136.3 of the Commissioner's regulations.

(j) Dental health certificate shall mean a statement describing the dental health condition of the student when the dental health assessment was made, describing if a student is in fit condition of dental health to permit his or her attendance at the public schools in accordance with the provisions of subdivision (k) of section 136.3 of the Commissioner's regulations.

2. Section 136.2 of the Regulations of the Commissioner of Education is amended, effective July 1, 2018 as follows:

§136.2 General regulations.

(a) All schools under the jurisdiction of the State Education Department shall provide a program of health services.

(b) School health services shall be provided by each school district for all students attending the public schools in this State, except in the city school [districts] district of the [cities] city of New York, [Buffalo and Rochester,] in accordance with law and the regulations. School health services shall include the services of a registered professional nurse, if one is employed, and shall also include such services as may be rendered as provided herein in examining students for the existence of disease or disability and in testing the eyes and ears of such students.

(c) The trustees or board of education of each school district shall employ, at a compensation to be agreed upon by the parties, a director of school health services.

(d) It shall be the duty of trustees and boards of education:

(1) to provide approved and adequate personnel and adequate facilities for treatment;

(2) to maintain for each student cumulative records covering the essential features of the health services program; and

(3) to make such reports to the department as may be required on forms prescribed by the [c]Commissioner.

3. Section 136.3 of the Regulations of the Commissioner of Education is amended, effective July 1, 2018 as follows:

§136.3 School health services.

(a) *General duties of trustees and boards of education.* It shall be the duty of the trustees and boards of education:

(1) to provide and maintain a continuous program of school health services in accordance with this section;

(2) except where otherwise prohibited by law, to advise, in writing, the parent of, or other persons in parental relation to, each student in whom any aspect of the total school health program indicates such student has defective sight or hearing, or a physical disability or other condition which may require professional attention with regard to health;

(3) to provide, where the exigencies warrant, relief in situations where the student would otherwise be deprived of the full benefit of education through inability to follow the instruction offered;

(4) to maintain a program of education for the purpose of informing the school personnel, parents, non-school health agencies, welfare agencies and the general public regarding school health conditions, services and factors relating to the health of students;

(5) to provide for guidance to parents, students and teachers in procedures for preventing and correcting defects and diseases and in the general improvement of the health of students;

(6) to furnish instruction to school personnel in procedures to follow in case of accident or illness;

(7) to provide inspections and supervision of the health and safety aspects of the school plant;

(8) to provide health examinations before participation in strenuous physical activity and periodically throughout the season as necessary; and

(9) to provide health examinations necessary for the issuance of employment certificates, vacation work permits, newspaper carrier certificates and street trades badges.

(b) Examination and health history. (1) Except in the city school [districts] district of the [cities] city of New York, [Buffalo and Rochester,] it shall be the duty of the trustees and boards of education to require each student enrolled in the public school to have a satisfactory health examination conducted by [the student's family] a duly licensed physician, physician assistant or nurse practitioner, upon the student's entrance in such school at any grade level and for each student entering pre- kindergarten or kindergarten and in the [2nd] 1st, [4th] 3rd, 5th, 7th, 9th and [10th] 11th grades. Such examination shall be acceptable for purposes of this section if it is administered not more than 12 months prior to the commencement of the school year in which the examination is required.

(2) An examination and health history of any student may be required by local school authorities at any time in their discretion to promote the educational interests of such student.

(3) In all school districts, the physician, physician assistant or nurse practitioner administering such examination shall determine whether a one-time test for sickle cell anemia is necessary or desirable and, if so determined, shall conduct such test and include the results in the health certificate prepared in accordance with subdivision (c) of this section, provided that nothing herein shall be deemed to require that a student be tested more than once during the period the student is eligible to attend a public school.

(c) Health certificates and proof of immunization. (1) Health certificates. It shall be the duty of the trustees and boards of education to require that each student, within 30

days after his or her entrance into school [or] and within 30 days after his or her entry into [the 2nd, 4th] pre-kindergarten or kindergarten, 1st, 3rd, 5th, 7th, 9th and [10th] 11th grades, submit to the principal or the principal's designee a health certificate that meets the requirements of this paragraph, provided that no health certificate shall be required of a student for which an accommodation for religious beliefs is made pursuant to subdivision (f) of this section.

(i) The health certificate shall:

(a) be on a form prescribed the Commissioner and signed by a duly licensed physician, physician assistant, or nurse practitioner, who is:

(1) authorized by law to practice in this State, and consistent with any applicable written practice agreement; or

(2) authorized to practice in the jurisdiction in which the examination was given, provided that the [c]Commissioner has determined that such jurisdiction has standards of licensure and practice comparable to those of New York;

(b) describe the condition of the student when the examination prescribed in subdivision (b) of this section was made, which examination shall not have been given more than 12 months prior to the commencement of the school year in which the examination is required.

(c) state the results of any test conducted on the student for sickle cell anemia pursuant to this section; [and]

(d) state whether such student is in a fit condition of health to permit his or her attendance at the public schools and, where applicable, whether the student has defective sight or hearing, has received scoliosis screening in the grades required by subdivision (e) of this section or has any other physical disability which may tend to prevent the

student from receiving the full benefit of school work or from receiving the best educational results, or which may require a modification of such work to prevent injury to the student.

(e) Each such certificate shall also state the student's body mass index (BMI) and weight status category in accordance with Education Law §903. For purposes of this subdivision, BMI is computed as the weight in kilograms divided by the square of height in meters or the weight in pounds divided by the square of height in inches multiplied by a conversion factor of 703. Weight status categories for children and adolescents shall be as defined by the Commissioner of Health;

(ii) The health certificate shall be filed in the student's cumulative record.

(iii) The principal or the principal's designee shall send a notice to the parents of, or person in parental relationship to, any student who does not present a health certificate, unless he or she has been accommodated on grounds of religious beliefs pursuant to subdivision (f) of this section, that if the required health certificate is not furnished within 30 days from the date of such notice, an examination by health appraisal will be made of such student by the director of school health services pursuant to subdivision (d) of this section.

(2) Immunizations. It shall be the duty of the trustees and boards of education to require that every student entering or attending school provide proof of immunization against certain diseases [poliomyelitis, mumps, measles, diphtheria, rubella, varicella, Haemophilus influenza type b (Hib) and hepatitis B] in accordance with the provisions of Public Health Law section 2164(7)(a).

(d) Examination by health appraisal. (1) Each principal or principal's designee shall report to the director of school health services having jurisdiction over such school, the

names of all students who are required to and have not furnished health certificates pursuant to subdivision (c) of this section, or who are students with disabilities.

(2) The director of school health services shall cause such students to be separately and carefully examined and tested to ascertain whether any such student has defective sight or hearing, or any other physical disability which may tend to prevent the student from receiving the full benefit of school work or from receiving the best educational results, or which may require a modification of such work to prevent injury to the student.

(3) Each examination shall also include a calculation of the student's body mass index (BMI) and weight status category in accordance with Education Law §904. For purposes of this subdivision, BMI is computed as the weight in kilograms divided by the square of height in meters or the weight in pounds divided by the square of height in inches multiplied by a conversion factor of 703. Weight status categories for children and adolescents shall be as defined by the Commissioner of Health.

(4) In all school districts, the physician, physician assistant or nurse practitioner administering such examination shall determine whether a one-time test for sickle cell anemia is necessary or desirable and, if so determined, shall conduct such test and include the results in the health certificate prepared in accordance with subdivision (c) of this section, provided that nothing herein shall be deemed to require that a student be tested more than once during the period the student is eligible to attend a public school.

(5) If it should be ascertained, upon such test or examination, that any students have defective sight or hearing, or other physical disability, including sickle cell anemia, the principal or principal's designee shall notify the student's parents or persons in parental relation as to the existence of such disability. If the parents or persons in parental relation are unable or unwilling to provide the necessary relief and treatment for such

students, such fact shall be reported by the principal or principal's designee to the director of school health services, whose duty it shall be to provide relief for such students.

(e) Health screenings. (1) It shall be the duty of trustees and boards of education to provide:

(i) scoliosis screening [at least] once each school year for [all students in grades 5 through 9] male students in grade 9, and for female students in grades 5 and 7, unless the scoliosis screening is documented on the student's health certificate. Such screening shall include the examination of the [uncovered spine] student's unclothed back while bending forward at the waist, including the cervical, thoracic, lumbar and [thoraco-lumbar] sacral vertebral segments by viewing from the front, back and sides under adequate illumination and observing the existing range of motion of the spine in all directions. Such screening shall be provided by [persons] licensed health professionals with appropriate training, including, but not limited to, [the] a registered professional nurse, [the] a school nurse teacher, [the] a nurse practitioner, [the] a physician assistant, a physical therapist, or [the school] a physician. The positive results of any such screening examinations for the presence of scoliosis shall be in writing and the parent of, or person in parental relation to, any student in whom the presence of scoliosis is found shall be advised of such results by the school authorities within 90 days after such finding. The requirements of this subparagraph relating to examination for scoliosis may be waived by the [c]Commissioner upon the filing with the [c]Commissioner of a resolution, duly adopted by a board of education following a public hearing on such proposed resolution, stating that the school district does not have the capability to comply with this subparagraph relative to the examination for scoliosis and that such compliance would place a financial burden upon the school district. The district shall provide, in addition to the resolution, the date of the

public hearing, a report of the findings from the hearing. The resolution shall be filed no later than October 1st of each school year. A waiver of this requirement by the [c]Commissioner shall be valid for one school year;

(ii) vision screening, if not documented on the health certificate, to all students who enroll in a school of this state including at a minimum color perception, distance acuity, and near vision within six months of admission to the school; in addition, all students shall be screened for distance acuity and near vision in grades pre-kindergarten or [Kindergarten] kindergarten, 1, [2,] 3, 5, 7 and [10] 11 and at any other time deemed necessary; the results of all such vision screening examinations shall be in writing and shall be provided to the pupil's parent or person in parental relation and to any teacher of the pupil within the school while the pupil is enrolled in the school [, and shall be kept in a permanent file of the school for at least as long as the minimum retention period for such records, as prescribed by the commissioner pursuant to article 57-A of the Arts and Cultural Affairs Law];

(iii) hearing screening, if not documented on the health certificate to all students within six months of admission to the school and in grades pre-kindergarten or [Kindergarten] kindergarten, 1, 3, 5, 7 and [10] 11, and at any other time deemed necessary; such screening shall include, but not be limited to, pure tone [and threshold air conduction] screening; the results of any such hearing tests requiring a follow up examination shall be in writing and shall be provided to the pupil's parent or person in parental relation and to any teacher of the pupil within the school while the pupil is enrolled in the school.

(2) The results of all health screenings (dental, hearing, vision and scoliosis) shall be recorded [on appropriate forms] in the student's cumulative health record which shall

be maintained [kept on file in the] by the school for at least as long as the minimum retention period for such records, as prescribed by the Commissioner pursuant to article 57-A of the Arts and Cultural Affairs Law. The trustees or board of education shall ensure that the health professional making the examination shall sign the cumulative health record and make appropriate recommendations;

(f) Accommodation for religious beliefs. Notwithstanding the provisions of this section, no health examinations, health history, examinations for health appraisal, screening examinations for sickle cell anemia and/or other health screenings shall be required where a student or the parent or person in parental relation to such student objects thereto on the grounds that such examinations, health history and/or screenings conflict with their genuine and sincere religious beliefs. A written and signed statement from the student or the student's parent or person in parental relation that such person holds such beliefs shall be submitted to the principal or the principal's designee in which case the principal or principal's designee may require supporting documents.

(g) Student health records. The health records of individual students shall be kept confidential in accordance with the Federal Family Educational Rights and Privacy Act (FERPA) and any other applicable Federal and State laws

(h) Exclusion from school of student with communicable disease. Whenever, upon investigation and evaluation by the director of school health services, or the school nurse, nurse practitioner, or physician assistant [or other health professionals] acting upon direction or referral of such director for assessment, care and treatment, a student in the public schools shows symptoms of any communicable or infectious disease reportable under the Public Health Law that imposes a significant risk of infection of others in the school, he or she shall be excluded from the school and sent home immediately, in a safe

and proper conveyance. The director of school health services may examine any student returning to school following an absence due to illness or unknown cause, who is without a certificate from a local public health officer, a duly licensed physician, physician assistant or a nurse practitioner, to determine that such student does not pose a threat to the school community.

(i) Health examination of employees and school premises. To protect students and staff from communicable diseases, the director of school health services, [or other health professionals] a registered professional nurse, nurse practitioner or physician assistant acting upon direction or referral of such director, may make such [evaluations] assessments of teachers and any other school employees, school buildings and premises as, in their discretion, they may deem necessary.

(j) Condom availability. Boards of education or trustees that elect to make condoms available to pupils as part of its program of school health services shall assure that adequate personal health guidance is provided to each pupil receiving condoms in the manner prescribed by section 135.3(c)(2)(ii) of this Title.

(k) Dental health certificates.

(1) It shall be the duty of the trustees and boards of education to request that each student, within 30 days after such student's entrance into school and within 30 days after such student's entry into the [2nd, 4th,] 1st, 3rd, 5th, 7th and [10th] 9th grades, submit to the principal or the principal's designee a dental health certificate that meets the requirements of this subdivision; provided that no dental health certificate shall be requested of a student for which an accommodation for religious beliefs is made pursuant to subdivision (f) of this section.

(i) The dental health certificate shall:

(a) be signed by a duly licensed dentist or a registered dental hygienist who is:

(1) authorized by law to practice in this State, and consistent with any applicable written practice agreement; or

(2) authorized to practice in the jurisdiction in which the [examination] assessment was given, provided that the [c]Commissioner has determined that such jurisdiction has standards of licensure and practice comparable to those of New York;

(b) describe the dental health condition of the student when the [examination] assessment was made, which [examination] assessment shall not have been given more than 12 months prior to the commencement of the school year in which the [examination] assessment is requested; and

(c) state whether such student is in fit condition of dental health to permit his or her attendance at the public schools.

(ii) Within 30 days after the student's entrance in such school or grades, the dental health certificate, if obtained, shall be filed in the student's cumulative health record.

(2) An examination and dental health history of any child may be requested by the local school authorities at any time in their discretion to promote the educational interests of such child.

(3) It shall be the duty of the trustees and boards of education to ensure that a notice of request for dental health certificates be distributed at the same time that parents of, or persons in parental relationship to, students are notified of health examination requirements. The notice shall include a statement that a list of dental practices, dentists and registered dental hygienists to which children [who need comprehensive dental examinations] may be referred for [treatment] dental services on a free or reduced cost basis is available upon request at the child's schools. Such list shall be as prescribed by

the [c]Commissioner and shall be made available by school districts to parents or persons in parental relationship upon request.