



TO: The Honorable the Members of the Board of Regents

FROM: Elizabeth R. Berlin

SUBJECT: Proposed Amendment to §155.17 of the Regulations of the Commissioner of Education Relating to School Safety Plans

DATE: September 26, 2019

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

SUMMARY

Issue for Decision (Consent Agenda)

Should the Board of Regents adopt the proposed amendment to §155.17 of Commissioner's Regulations relating to school safety plans to implement Section 32 of Part YYY of Chapter 59 of the Laws of 2019?

Reason(s) for Consideration

Required by State statute.

Proposed Handling

The proposed amendment will be presented to the Full Board for adoption as a second emergency measure and as a permanent rule at the October 2019 Board of Regents meeting.

Procedural History

The proposed amendment was adopted by the Board of Regents at its July 2019 meeting as an emergency measure, effective July 16, 2019, in order to timely implement Section 32 of Part YYY of Chapter 59 of the Laws of 2019. A Notice of Emergency Adoption and Proposed Rule Making was published in the State Register on July 31, 2019. A copy of the proposed rule is attached. Following the 60-day public comment period, the Department received no comments on the proposed amendment.

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 nationwide 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. To enhance efforts of school administrators and staff to maintain school safety, many school districts now utilize school safety and security staff or School Resource Officers (SROs) on a daily basis.

Although not defined by law in New York State, an SRO is often a police officer who has received additional training hours in school policing prior to working in a school setting. Incorporating school safety and security staff or SROs in schools raises concerns about escalating adolescent behavior or issues of school discipline to law enforcement. Studies have found that in schools with SROs, students were significantly more likely to be arrested for disorderly conduct and other minor infractions than students in schools that did not have SROs.¹

The 2019-2020 Enacted State Budget included amendments to Education Law §2801-a to require that school districts and charter schools adopt a written contract or memorandum of understanding that is developed with stakeholder input, that defines the relationship between a school district or charter school, school personnel, students, visitors, law enforcement, and public or private security personnel. The written contract or memorandum of understanding must clearly delegate the role of school discipline to school administration and be consistent with the code of conduct. Such contract or MOU is required to be incorporated and published as part of the school district safety plan. The amendments became effective on July 1, 2019.

In addition to the amendments to Education Law §2801-a that were included in the 2019-20 Enacted State Budget, the New York State Office of the State Comptroller (OSC) recently released its report summarizing its audit of the Department's oversight of school and district efforts regarding school emergency planning. The audit included recommendations that the Department provide additional clarity regarding requirements for public comment periods and board adoption of district-wide safety plans. The proposed amendment therefore clarifies that both the district-wide safety plans and building plans shall be submitted on October 1 of each school year; instead of the previous requirement which required school districts to submit district-wide safety plans by October 1 and school-level building plans by October 15. This will simplify the plan submission process for the districts.

¹ [http://youthjusticenc.org/download/education-justice/school-policing-security/School%20Resource%20of%EF%AC%81cers%20and%20the%20Criminalization%20of%20Student%20Beha vior.pdf](http://youthjusticenc.org/download/education-justice/school-policing-security/School%20Resource%20of%EF%AC%81cers%20and%20the%20Criminalization%20of%20Student%20Beha%20vior.pdf)

Related Regents Items

[July 2019: Proposed Amendment to §155.17 of the Regulations of the Commissioner of Education Relating to School Safety Plans](https://www.regents.nysed.gov/common/regents/files/719p12a2.pdf)

(<https://www.regents.nysed.gov/common/regents/files/719p12a2.pdf>)

Recommendation

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

VOTED: That §155.17 of the Regulations of the Commissioner of Education be amended, effective October 14, 2019, as an emergency action for the preservation of the general welfare in order to conform §155.17 of the Commissioner's regulations with the amendments made to Education Law §2801-a, as amended by Section 32 of Part YY of Chapter 59 of the Laws of 2019 and to ensure that the emergency rule adopted at the July 2019 Board of Regents remains continuously in effect until it can be adopted as a permanent rule.

VOTED: That §155.17 of the Regulations of the Commissioner of Education be amended, as submitted, effective October 23, 2019.

Timetable for Implementation

If adopted by the Board of Regents at the October Board of Regents meeting, the proposed amendment will become effective October 23, 2019.

STATEMENT OF FACTS AND CIRCUMSTANCES
WHICH NECESSITATE EMERGENCY ACTION

The 2019-2020 Enacted State Budget included amendments to Education Law §2801-a to require that school districts and charter schools adopt a written contract or memorandum of understanding that is developed with stakeholder input, that defines the relationship between a school district or charter school, school personnel, students, visitors, law enforcement, and public or private security personnel. The written contract or memorandum of understanding must clearly delegate the role of school discipline to school administration and be consistent with the code of conduct. Such contract or MOU is required to be incorporated and published as part of the school district safety plan. The amendments became effective on July 1, 2019.

In addition to the amendments to Education Law §2801-a that were included in the 2019-20 Enacted State Budget, the New York State Office of the State Comptroller (OSC) recently released its report summarizing its audit of the Department's oversight of school and district efforts regarding school emergency planning. The audit included recommendations that the Department provide additional clarity regarding requirements for public comment periods and board adoption of district-wide safety plans. The proposed amendment clarifies that the district-wide safety plans and building plans shall be submitted on October 1 of each school year; instead of the previous requirement which required school districts to submit district-wide safety plans by October 1 and school-level building plans by October 15. This will simplify the plan submission process for the districts.

Because the Board of Regents meets at scheduled intervals, the earliest the proposed amendment could be presented for regular (non-emergency) adoption, after publication in the State Register and expiration of the 60-day public comment period provided for in the State Administrative Procedure Act (SAPA) Sections 202(1) and (5), is the October 2019 Regents meeting. Furthermore, pursuant to SAPA Section 203(1), the earliest effective date of the proposed amendment, if adopted at the July Regents meeting, is October 23, 2019, the date a Notice of Adoption would be published in the State Register. However, because Section 32 of Chapter 59 of the Laws of 2019 became effective on July 1, 2019, emergency action is necessary now for the preservation of the general welfare in order to conform Section 155.17 of the Commissioner's Regulations with the amendments made to Education Law §2801-a, as amended by Section 32 of Part YYY of Chapter 59 of the Laws of 2019 and to ensure that the emergency rule adopted at the July 2019 Board of Regents remains in effect until it can be adopted as a permanent rule.

AMENDMENT TO THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to sections 101, 207, 305, 2801-a of the Education Law and Section 32 of Chapter 59 of the Laws of 2019.

Section 155.17 of the Regulations of the Commissioner of Education shall be amended to read as follows:

155.17 School safety plans.

(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 for the 2002-2003 through the 2015-2016 school years and shall update and adopt by September 1st for the 2016-2017 school year and each subsequent September 1st thereafter, a comprehensive district-wide school safety plan and building-level 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 emergency response team, as such terms are defined in subdivision (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. 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.

(b) Definitions.

As used in this section:

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(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, 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] when details of a confidential building-level emergency response plan or confidential portions of a district-wide emergency response strategy are discussed.

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(c) District-wide school safety plans and building-level emergency response plans.

District-wide school safety plans and building-level emergency response plans shall be designed to prevent or minimize the effects of 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:

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(xi) policies and procedures relating to school building security, including, where appropriate:

a. the use of school safety or security officers and/or school resource officers.

Beginning with the 2019-20 school year, and every school year thereafter, every school shall define the areas of responsibility of school personnel, security personnel and law enforcement in response to student misconduct that violates the code of conduct. A school district or charter school that employs, contracts with, or otherwise retains law enforcement or public or private security personnel, including school resource officers, shall establish a written contract or memorandum of understanding that is developed with stakeholder input, including, but not limited to, parents, students, school administrators, teachers, collective bargaining units, parent and student organizations and community members, as well as probation officers, prosecutors, defense counsels and courts that are familiar with school discipline. Such written contract or memorandum of understanding shall define the relationship between a school district or charter school, school personnel, students, visitors, law enforcement, and public or private security personnel. Such contract or memorandum of understanding shall be consistent with the code of conduct, define law enforcement or security personnel's roles, responsibilities and involvement within a school and clearly delegate the role of school discipline to the school administration. Such written contract or memorandum of understanding shall be incorporated into and published as part of the district safety plan; and

b. security devices or procedures;

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(2) . . .

(3)

(a) Each board of education, chancellor or other governing body shall make each district-wide safety plan available for public comment at least 30 days prior to its adoption. Such district-wide 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] submit its district-wide safety plan and all amendments to such plan [with] to the commissioner [and all amendments to such plan], [shall be filed with the commissioner] in a manner prescribed by the commissioner, within [no later than] 30 days after [their] its adoption [.]. Commencing with the 2019-2020 school year, such district-wide plans must be submitted no later than October 1, 2019, and each subsequent October 1 thereafter.

(b) Each board of education, chancellor or other governing body or officer shall ensure that [a copy of] each building-level emergency response plan and any amendments thereto, is [filed with] submitted to 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 15th thereafter.] for the 2016-2017, 2017-2018, 2018-2019 and 2019-2020 school years and for the 2020-2021 school year

and thereafter, such building-level emergency response plans must be submitted no later than October 1, 2020, and each subsequent October 1 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.

(d) . . .

(e) . . .

(f) Reporting. Each superintendent shall notify the commissioner as soon as possible whenever the emergency plan or building-level school safety plan is activated and results in the closing of a school building in the district, and shall provide such information as the commissioner may require in a manner prescribed by the commissioner. School districts within a supervisory district shall provide such notification through the district superintendent, who shall be responsible for notifying the commissioner. Such information need not be provided for routine snow emergency days.

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