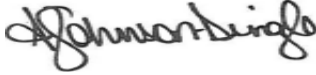






TO: The Honorable Members of the Board of Regents

FROM: Angelique Johnson-Dingle 

SUBJECT: Proposed Amendment of Section 135.5 and Addition of Section 136.9 to the Regulations of the Commissioner of Education Relating to Implementing the Dominic Murray Sudden Cardiac Arrest Prevention Act

DATE: September 22, 2022

AUTHORIZATION(S):  

SUMMARY

Issue for Decision (Consent)

Should the Board of Regents adopt the proposed amendment of section 135.5 and addition of section 136.9 to the Regulations of the Commissioner of Education relating to implementing the Dominic Murray Sudden Cardiac Arrest Prevention Act?

Reason(s) for Consideration

Required by State statute.

Proposed Handling

The proposed amendment is presented to the Full Board for adoption as an emergency rule at its October 2022 Regents meeting. A copy of the proposed rule (Attachment A) and a statement of facts and circumstances justifying emergency action (Attachment B) are included.

Procedural History

The proposed amendment was presented to the P-12 Education Committee for discussion and recommendation to the Full Board for adoption as an emergency rule at the May 2022 Regents meeting, effective July 1, 2022. A Notice of Proposed Rule Making was published in the State Register on June 1, 2022, and a Notice of Emergency Adoption was published in the State Register on July 20, 2022.

Following publication, the Department received comment on the proposed amendment. An Assessment of Public Comment is included (Attachment C). In response to public comment, the Department presented revisions to the proposed amendment at the September 2022 Regents meeting. A Notice of Emergency Adoption and Revised Rule Making will be published in the State Register on September 28, 2022, for a 45-day public comment period.

Since the September 2022 emergency action will expire on November 11, 2022, a second emergency action is necessary to ensure the emergency rule remains continuously in effect until it can be permanently adopted at the December 2022 Regents meeting. A Notice of Emergency Adoption will be published in the State Register on November 30, 2022. Supporting materials are available upon request to the Secretary of the Board of Regents.

Background Information

Chapter 500 of the Laws of 2021 (Chapter 500), effective July 1, 2022, establishes the Dominic Murray Sudden Cardiac Arrest Prevention Act (“the Act”) which:

- requires the Commissioner of Health to develop information, in conjunction with the Commissioner of Education, relating to pupils exhibiting signs or symptoms of pending or increased risk of sudden cardiac arrest;
- directs the Commissioner of Education to review such information created by the Department of Health and post such information on the Department’s website;
- requires all schools to include such information in any permission form, consent form, or similar document that may be required for a student’s participation in interscholastic athletics and include such information, or reference how to obtain such information from the Department and Department of Health’s websites, on the school’s website, if one exists;
- requires the Commissioner of Education to promulgate regulations requiring that any student displaying signs or symptoms of pending or increased risk of sudden cardiac arrest shall be immediately removed from athletic activities and shall not resume athletic activity until the student has been evaluated by and received written and signed authorization from a licensed physician; such authorization must be kept on file in the student’s permanent health record; and
- removes the reference to “the American National Red Cross” and replaces such term with “a nationally recognized organization” as defined in Public Health Law §3000-b(1)(d), regarding completion of a course of study in first aid knowledge and skills by public and nonpublic school coaches of extra-class athletic activities.

Therefore, the Department proposes to add a new section 136.9 and amend section 135.5 of the Commissioner’s regulations to implement the above provisions of the Dominic Murray Sudden Cardiac Arrest Prevention Act.

Proposed Revisions to the Regulation Following the First Public Comment Period

In response to public comment, the proposed rule has been revised to differentiate between the terms “athletic activities” and “physical activities” as follows:

- The definition of the term “athletic activities” is revised to mean “participation in sessions for instruction and practice in skills, attitudes, and knowledge through participation in individual, group and team activities organized on an intramural, extramural, interschool athletic or inclusive athletic activities basis to supplement regular physical education class instruction, otherwise known as extra-class periods in physical education or extra-class activities.”
- A new definition for “physical activities” is added, which is defined as “participation in physical education classes and recess, or similar activities during the school day.”

Further, the proposed rule has been revised to clarify that:

- Regarding athletic activities, any student who displays signs or symptoms of pending or increased risk of sudden cardiac arrest must be immediately removed from such activities and cannot return until they receive clearance from a physician.
- Regarding physical activities, any person who displays signs or symptoms of pending sudden cardiac arrest must be immediately removed from such activities and cannot return until they receive clearance from a health care provider, which may be either a physician, nurse practitioner (NP), or physician assistant (PA).

Many students use school-based health clinics or other walk-in clinics to access health care services. Such clinics are primarily staffed by NPs and PAs. NPs and PAs can diagnose and determine if a student needs to be seen by a physician. While Chapter 500 requires a student to be cleared by a physician for athletic activities, the revisions provide flexibility for clearance to resume physical activities. Limiting students to see a physician only for physical activities is not medically necessary and may amount to a barrier to students who may not have ready access to a physician and could result in students never receiving clearance to resume physical activities in school.

The revisions also clarify that the need to assess increased risk applies only to athletic activities. Increased risk is determined by a thorough individual health history that includes family history. Currently, such histories are completed as part of mandated health examinations for school attendance, and prior to each sports season for student-athletes. It is not feasible to obtain such detailed health histories for the grade levels a health examination is not required (PreK or K, 1, 3, 5, 7, 9, & 11), and would place an inordinate burden on school health professionals, who must review each health history.

Finally, non-substantive revisions to the proposed rule have been made to replace the term “he or she” with “the student” to use non-gendered language, and the

term “pupil” has been replaced with the term “student” as such term is generally used in more recent amendments to the Commissioner’s regulations.

Related Regents Items

May 2022: [Proposed Amendment of Section 135.5 and Addition of Section 136.9 to the Regulations of the Commissioner of Education Relating to Implementing the Dominic Murray Sudden Cardiac Arrest Prevention Act](https://www.regents.nysed.gov/common/regents/files/522p12a3.pdf)
(<https://www.regents.nysed.gov/common/regents/files/522p12a3.pdf>)

September 2022: [Proposed Amendment of Section 135.5 and Addition of Section 136.9 to the Regulations of the Commissioner of Education Relating to Implementing the Dominic Murray Sudden Cardiac Arrest Prevention Act](https://www.regents.nysed.gov/common/regents/files/922p12a5.pdf)
<https://www.regents.nysed.gov/common/regents/files/922p12a5.pdf>

Recommendation

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

VOTED: That section 135.5 of the Commissioner’s regulations be amended, and section 136.9 of the Commissioner’s regulations be added, as submitted, effective November 12, 2022, as an emergency action upon a finding by the Board of Regents that such action is necessary for the preservation of the general welfare and public health to timely implement the provisions of the Dominic Murray Sudden Cardiac Arrest Prevention Act (Chapter 500 of the Laws of 2021) on its effective date, and to ensure that the emergency action taken at the September Regents meeting remains continuously in effect.

Timetable for Implementation

If adopted as an emergency rule at the October 2022 Regents meeting, the emergency rule will become effective on November 12, 2022. It is anticipated that the proposed amendment will be presented for permanent adoption at the December 2022 Regents meeting, after publication of the proposed amendment in the State Register and expiration of the 45-day public comment period required under the State Administrative Procedure Act for revised rulemakings. If adopted at the December 2022 meeting, the proposed amendment will become effective as a permanent rule on December 28, 2022.

AMENDMENT OF THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to sections 101, 207, 305, 923, 3001-b, 3001-c of the Education Law and Chapter 500 of the Laws of 2021.

1. Part 136 of the Regulations of the Commissioner of Education is amended by adding a new section 136.9 to read as follows.

Section 136.9. Sudden Cardiac Arrest

(a) Applicability.

(1) The provisions of this section relate to students who display signs or symptoms of pending or increased risk of sudden cardiac arrest while engaging in athletic activities.

(2) The provisions of this section shall apply to all school districts, charter schools, and nonpublic schools.

(b) Definitions. As used in this section:

(1) *Athletic activities* mean participation in sessions for instruction and practice in skills, attitudes, and knowledge through participation in individual, group and team activities organized on an intramural, extramural, interschool athletic, or inclusive athletic basis to supplement regular physical education class instruction, otherwise known as extraclass periods in physical education or extraclass activities.

(b) *Physical activities* mean participation in physical education classes and recess or similar activities during the school day.

(c) Requirements.

(1) The Department shall post on its website information developed by the Commissioner of Health, in conjunction with the Commissioner, relating to students who

exhibit signs or symptoms of pending or increased risk of sudden cardiac arrest. Such information shall include, but not be limited to:

(i) The definition of sudden cardiac arrest; and

(ii) signs and symptoms of pending or increased risk of sudden cardiac arrest.

(2) A school shall include the information required under paragraph (1) of this subdivision in any document that may be required from a parent or person in parental relation for a student's participation in interscholastic sports, including a permission or consent form.

(3) A school shall include the information required under paragraph (1) of this subdivision on its website, if in existence, or reference how to obtain such information from the webpages where such information is available from the Department and the Department of Health.

(d) Removal from athletic and physical activities.

(1) Any student who displays signs or symptoms of pending or increased risk of sudden cardiac arrest must be immediately removed from athletic activities and any person who displays signs or symptoms of pending sudden cardiac arrest must be immediately removed from physical activities.

(2) No student removed from athletic activities shall resume such activities until such student has been evaluated by and received written and signed authorization from, a licensed physician. No student removed from physical activities shall resume such activities until such student has been evaluated and received written and signed authorization from a healthcare provider. With respect to athletic activities for students attending a public school, no such student shall resume such activities until the student

has also received clearance from the director of school health services to participate in such activity.

(i) Such authorization shall be kept on file in the student's permanent health record.

(ii) The school must abide by any limitations or restrictions concerning school attendance and athletic or physical activities issued by the student's treating physician or a health care provider.

2. Section 135.3 of the Regulations of the Commissioner of Education is amended to read as follows:

Section 135.5. First aid knowledge and skills requirements for coaches

(a) Coaches of extra class periods in physical education, as defined in section 135.1(h) of this Part, shall meet the requirements of this section.

(b) Except as provided in subdivision (c) of this section, all coaches must hold valid certification in first aid knowledge and skills, including instruction in the administration of adult cardiopulmonary resuscitation, as issued by [the American National Red Cross] a nationally recognized organization, as defined in Public Health Law §3000-b(1)(d), or meet equivalent requirements as set forth in this section.

(c) By January 15, 1993, all coaches employed on or after January 15, 1992, must hold valid certification in first aid knowledge and skills, including instruction in administration of adult cardiopulmonary resuscitation, as issued by [the American National Red Cross] a nationally recognized organization, as defined in Public Health Law §3000-b(1)(d), or meet equivalent requirements as set forth in this section.

(d) For the purpose of this section, the following shall be deemed as equivalent to certification in first aid knowledge and skills, including instruction in administration of

adult cardiopulmonary resuscitation as issued by [the American National Red Cross] a nationally recognized organization, as defined in Public Health Law §3000-b(1)(d):

(1) completion of an approved course for coaches in first aid knowledge and skills, including instruction in administration of adult cardiopulmonary resuscitation and instruction in recognizing signs and symptoms of cardiac arrest and sudden cardiac arrest;

(2) completion of an approved college or university first aid knowledge and skills course, including instruction in administration of adult cardiopulmonary resuscitation and instruction in recognizing signs and symptoms of cardiac arrest and sudden cardiac arrest;

(3) completion of approved college or university courses in athletic training and sports medicine, which include first aid knowledge and skills, including instruction in administration of adult cardiopulmonary resuscitation and instruction in recognizing signs and symptoms of cardiac arrest and sudden cardiac arrest; or

(4) equivalent experience which is approved by the Commissioner of Education.

(e) Except as provided in subdivision (c) of this section, prior to the start of each sports season, coaches must provide valid evidence to their chief school officer that their first aid and adult cardiopulmonary resuscitation knowledge and skills are current pursuant to the requirements established by [the American National Red Cross] a nationally recognized organization, as defined in Public Health Law §3000-b(1)(d), or that they meet equivalent requirements as set forth in subdivision (d) of this section.

STATEMENT OF FACTS AND CIRCUMSTANCES WHICH NECESSITATE
EMERGENCY ACTION

Chapter 500 of the Laws of 2021, effective July 1, 2022, establishes the Dominic Murray Sudden Cardiac Arrest Prevention Act (“the Act”) which:

- Requires the Commissioner of Health to develop information, in conjunction with the Commissioner of Education, relating to pupils exhibiting signs or symptoms of pending or increased risk of sudden cardiac arrest.
- Directs the Commissioner of Education to review such information created by the Department of Health and post such information on the Department’s website.
- Requires all schools to include such information in any permission form, consent form, or similar document that may be required for a student’s participation in interscholastic athletics and include such information, or reference how to obtain such information from the Department and Department of Health’s websites, on the school’s website, if one exists.
- Requires the Commissioner of Education to promulgate regulations requiring that any student displaying signs or symptoms of pending or increased risk of sudden cardiac arrest shall be immediately removed from athletic activities and shall not resume athletic activity until he or she has been evaluated by and received written and signed authorization from a licensed physician. Such authorization must be kept on file in the pupil’s permanent health record.
- Removes the reference to “the American National Red Cross” and replaces such term with “a nationally recognized organization” as defined in Public Health Law

§3000-b(1)(d), regarding completion of a course of study in first aid knowledge and skills by public and nonpublic school coaches of extra-class activities.

Therefore, the Department proposes to add a new section 136.9 and amend section 135.5 of the Commissioner's regulations to implement the above provisions of the Dominic Murray Sudden Cardiac Arrest Prevention Act.

The proposed amendment was presented to the P-12 Education Committee for recommendation to the Full Board for adoption as an emergency rule at the May 2022 meeting of the Board of Regents, effective July 1, 2022. In response to public comment, the Department revised the proposed amendment and took an additional emergency action at the September 2022 Regents meeting, effective September 12, 2022. Since the Board of Regents meets at fixed intervals, the earliest the proposed amendment could be adopted by regular (non-emergency) action after expiration of the 45-day public comment period provided for in the State Administrative Procedure Act (SAPA) section 201(4-a) would be the December 2022 Regents meeting. Furthermore, pursuant to SAPA 203(1), the earlier effective date of the proposed rule, if adopted at the December meeting, would be December 28, 2022, the date the Notice of Adoption would be published in the State Register.

Therefore, emergency action is necessary at the October 2022 meeting for the preservation of the general welfare and public health to timely implement the provisions of the Dominic Murray Sudden Cardiac Arrest Prevention Act (Chapter 500 of the Laws of 2021) on its effective date, and to ensure that the emergency action taken at the September 2022 Regents meeting remains continuously in effect,

It is anticipated that the proposed rule will be presented to the Board of Regents for adoption as a permanent rule at the December 2022 meeting, which is the first

scheduled meeting after expiration of the 60-day public comment period mandated by SAPA for state agency rulemaking.

ASSESSMENT OF PUBLIC COMMENT

Since publication of the Notice of Proposed Rule Making in the State Register on June 1, 2022, the Department received the following public comment on the proposed rule. These comments were previously published as part of the September 2022 Regents item:

1. COMMENT: Several commenters expressed concern that the definition of athletic activities included physical education (PE) classes. Commenters felt that athletic activities were related to sports and PE classes should be defined as physical activities.

DEPARTMENT RESPONSE: In response to public comment, the Department has amended the definition of athletic activities to remove PE classes and added a new definition of physical activities that includes PE classes.

2. COMMENT: Several commenters expressed concern regarding the requirement that a student who displays signs and symptoms or pending or increased risk of sudden cardiac arrest (SCA) must be seen by a licensed physician prior to resuming the activity. This concern was raised because many students see physician assistants and nurse practitioners and have difficulty accessing a physician.

DEPARTMENT RESPONSE: The regulation is consistent with the statute (Chapter 500 of the Laws of 2021), which requires that students removed from athletic activities due to signs and symptoms or pending or increased risk of SCA receive written and signed authorization from a licensed physician before resuming the athletic activity. The regulation has been revised so that students who show signs and symptoms of SCA during physical activities (PE class, etc.) may be seen by a healthcare provider (which includes physicians, nurse practitioners, and physician assistants), before resuming

physical activities. This revision will allow students to readily access a healthcare provider to evaluate their symptoms in those circumstances.

3. COMMENT: Several commenters requested that the term director of school health service be replaced with the term medical director, stating that schools use the title director of school health services for personnel other than the school-employed physician or nurse practitioner.

DEPARTMENT RESPONSE: Education Law §902 states that public schools must employ “a qualified physician, or a nurse practitioner... to perform the duties of the director of school health services, including 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.” Therefore, only a physician or nurse practitioner may have the title of Director of School Health Services. The term medical director is not defined in statute but is the commonly used term for a school district’s Director of School Health Services. No changes to the proposed rule are necessary.

4. COMMENT: Several commenters asked that the regulation be amended to permit a student's mandated grade examination showing fitness for attendance to school to suffice for participation in all physical activity unless otherwise indicated.

DEPARTMENT RESPONSE: This comment is outside the scope of the proposed rule; therefore, no changes are necessary.

5. COMMENT: A commenter writes that “[i]t should be clear that medical directors do not do the clinical evaluation of students who experienced symptoms. We do the final ok AFTER they have seen a licensed health professional. We are not equipped to clinically

evaluate or order tests on students; that is the role of their primary health care source. This is consistent with how we currently manage concussions.”

DEPARTMENT RESPONSE: The proposed regulation is consistent with statute and current regulations. Commissioner’s regulation §135.4(c)(7)(i)(i) requires that boards of education provide “adequate health examination before participation in strenuous activity and periodically throughout the season as necessary, and to permit no pupil to participate in such activity without the approval of the school medical officer”, also referred to as the director of school health services. The Department has historically interpreted “periodic examination as necessary” to mean following injury and illness. Therefore, the director of school health services is responsible for authorizing a student to return to athletics following illness or injury. This section does not require the director of school health services (who can be either a physician or nurse practitioner) to be the physician who evaluates and provides the written clearance for a student to resume athletic activities if removed due to signs and symptoms of pending or increased risk of SCA. The director of school health service’s authorization may be provided by conducting their own evaluation, or by reviewing the written clearance from the healthcare provider who evaluated the student, in accordance with their professional judgment. No changes to the proposed rule are needed.

6. COMMENT: A commenter questioned “[h]ow will these students at risk for Sudden Cardiac Death be identified and evaluated?” Another commenter stated that “[s]pecific guidance is needed regarding necessary cardiac evaluation and clearance for competitive high school sports, NJROTC, physical education and the role of the school medical director.”

DEPARTMENT RESPONSE: The Department, in collaboration with the Department of Health, has developed information on signs and symptoms and personal or family history that indicate a student is at risk for SCA and requires further evaluation by a health care provider. Both Departments have posted this information on their respective websites. Additionally, the Department will provide technical assistance as needed. No changes to the proposed rule are needed.

7. COMMENT: A commenter stated that “[t]he Interim Sports Form is only for sports. As per the Domonic Murray memo – clearance is needed for activities that increase heart rate and respirations. What is the role of the school nurse in this process?

What about the responsibilities of the athletes and their parent/guardians?”

DEPARTMENT RESPONSE: While the Department recognizes the commenter’s request for clarity and intends to provide further guidance on this topic, the comments are beyond the scope of the amendment. Please also see the response to comment #6. No changes to the proposed rule are needed.