



TO: P-12 Education Committee

FROM: Angelique Johnson-Dingle *Angelique Johnson-Dingle*

SUBJECT: Proposed Addition of Section 136.10 to the Regulations of the Commissioner of Education Relating to Statewide Protocols for Diapering and Toileting

DATE: December 31, 2025

AUTHORIZATION(S): *Dom N. B.* *Betty M.*

SUMMARY

Issue for Decision

Should the Board of Regents adopt the proposed addition of section 136.10 to the Regulations of the Commissioner of Education relating to statewide protocols for diapering and toileting?

Reason for Consideration

Required by State statute (Chapter 361 of the Laws of 2024).

Proposed Handling

The proposed amendment is submitted to the P-12 Education Committee for discussion and recommendation to the Full Board for adoption as an emergency rule at its January 2026 meeting. A copy of the proposed rule (Attachment A) and a statement of facts and circumstances justifying emergency action (Attachment C) are attached.

Procedural History

The proposed amendment was presented to the P-12 Education Committee for discussion at the September 2025 meeting. A Notice of Proposed Rule Making was published in the State Register on September 24, 2025, for a 60-day public comment period. Following publication, the Department received comments on the proposed amendment. An Assessment of Public Comment (Attachment B) is attached. The proposed amendment has been revised in response to public comment as set forth below. If adopted as an emergency rule at the January 2026 meeting, a Notice of Revised Rule Making will be published in the State Register on January 28, 2026, for a

45-day public comment period, and a Notice of Emergency Adoption will be published in the State Register on April 15, 2025. Supporting materials are available upon request to the Secretary of the Board of Regents.

Background Information

Chapter 361 of the Laws of 2024 adds a new subdivision 62 to section 305 of the Education Law, effective March 27, 2026, which directs the Commissioner to promulgate rules and regulations establishing uniform statewide protocols for diapering and toileting of students in public schools. The statute requires that the protocols include requiring most schools—including school districts, public schools, boards of cooperative educational services (BOCES), special act school districts, approved private residential or nonresidential schools for the education of students with disabilities, state-supported schools for the blind and deaf, and certain approved preschool special education programs—to provide students and staff with safe and accessible equipment, supplies, and facilities for diapering and toileting. It also defines basic procedures to promote a safe and healthy environment.

Consistent with Education Law §305, the Department proposes to add a new section 136.10 to the Regulations of the Commissioner of Education to implement the legislation described above. Specifically, the proposed rule requires that schools:

- Define basic procedures to promote a safe and healthy environment to support diapering and toileting, and establish a plan with protocols that outline clear, age-appropriate routines to support student privacy, hygiene, and supervision;
- Provide annual training on health and safety procedures to all relevant school personnel;
- Ensure that every restroom and diaper changing area is consistently maintained and cleaned, operational, safe, and appropriately equipped;
- Ensure that toileting facilities and changing areas provide students with privacy in a separate area that is developmentally appropriate and accessible for all students, including students with disabilities;
- Provide students with access to restroom facilities during the school day, including instructional and extracurricular time;
- Provide access to diapering, toileting, or restroom without unreasonable delay;
- Ensure that restrooms and changing areas are safe and clean;
- Ensure essential diapering and toileting supplies and equipment are accessible at all times as appropriate per student need;
- Not suspend, disenroll, or exclude a student from enrollment or participation in school or school programs based on their toileting status;

- Manage toileting accidents with sensitivity and without punishment, exclusion, or shaming; and
- Provide all supports, services, and specialized equipment to preschool and school-age students with disabilities who require assistance with toileting in accordance with their individualized educational program (IEP) or Section 504 Plan.

Revisions to the Proposed Amendment

In response to public comments, the Department proposes two amendments to the rule. First, the Department proposes to remove references to preschool special education programs that are licensed or regulated by other state agencies. Second, the Department recommends amending the initial proposal to remove mention of specific disability categories to ensure that developmentally appropriate toileting policies are applicable to all students who need diapering or toileting support.

Related Regents Items

[September 2025: Proposed Addition of Section 136.10 to the Regulations of the Commissioner of Education Relating to Statewide Protocols for Diapering and Toileting](https://www.regents.nysed.gov/sites/regents/files/925p12d2revised.pdf)
(<https://www.regents.nysed.gov/sites/regents/files/925p12d2revised.pdf>)

Recommendation

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

VOTED: That section 136.10 of the Regulations of the Commissioner of Education, as amended herein, is effective March 27, 2026, as an emergency rule to conform the Commissioner's regulations to Chapter 361 of the Laws of 2024.

Timetable for Implementation

If adopted as an emergency rule at the January 2026 Regents meeting, the revised proposed rule will become effective on March 27, 2026, the date upon which Chapter 361 of the Laws of 2024 takes effect. It is anticipated that the revised proposed amendment will be presented for permanent adoption at the May 2026 Regents meeting, after publication of the proposed amendment in the State Register and expiration of an additional 45-day public comment period required under the State Administrative Procedure Act for revised rule-making. If adopted at the May 2026 meeting, the revised proposed amendment will become effective as a permanent rule on June 3, 2026.

AMENDMENT TO THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to sections 101, 207, and 305 of the Education Law and Chapter 361 of the Laws of 2024

1. The Regulations of the Commissioner of Education are amended by adding a new section 136.10 to read as follows:

Section 136.10 Statewide Protocols for Diapering and Toileting

(a) Definitions. As used in this section:

(1) *Diapering* means the process of disposing of soiled diapers, cleansing the skin, and reapplying a clean, dry diaper to ensure hygiene and comfort.

(2) *Toileting* means any activity related to a student's use of restroom facilities, including bathroom breaks, assistance with specific tasks related to toileting, and management of toileting accidents.

(3) *Toilet learning* means a series of steps aimed at helping a student develop the skills and independence necessary for using the toilet.

(4) *School* means a school district, public school, board of cooperative educational services, special act school district, approved preschool special education programs that are not licensed or otherwise regulated by other state agencies, state-supported school, or approved private school for the education of students with disabilities.

(5) *School personnel* means any applicable staff members identified by the school, which may include but not be limited to teachers, aides, administrators, nurses, or custodians.

(6) *Student* means school-age students, prekindergarten students, and preschool students with disabilities attending a school as defined in this section.

(7) *Prekindergarten students* means children enrolled in State-administered Universal Prekindergarten (UPK) programs overseen by a public school district.

(b) All schools shall:

(1) Define basic procedures to promote a safe and healthy environment to support diapering and toileting, and establish a plan with protocols that outline clear, age-appropriate routines to support student privacy, hygiene, and supervision. School plans must:

(i) identify staff roles and responsibilities regarding diapering and toileting within the school;

(ii) respect the privacy of each student during diapering and toileting, in accordance with age and developmental needs, while maintaining appropriate supervision;

(iii) ensure that staff provide direct and/or indirect supervision per student needs;
and

(iv) be made available to parents and persons in parental relation upon request.

(2) Provide annual training on health and safety procedures to all relevant school personnel. Such training must address the following:

(i) maintenance of the diapering and toileting areas to ensure they are safe, sanitary, and hygienic for all students;

(ii) blood-borne pathogens and the use of standard precautions when dealing with blood and bodily fluids in accordance with the school's Bloodborne Pathogens (BBP) exposure control plan and training as required by 29 CFR 1910.1030; and

(iii) how to assist students with toilet learning and personal care needs in a respectful, culturally responsive, and developmentally appropriate way.

(3) Ensure that every restroom and diaper changing area is consistently maintained and cleaned, operational, safe, and appropriately equipped. Specifically, schools must ensure that:

(i) toileting and diaper changing areas are as close as possible to a sink with soap, paper towels or a hand dryer, and running water. The toileting and diaper changing areas or sinks must not be used for food preparation; and

(ii) the diaper changing area has a lined, covered container or a plastic bag designated for soiled diapers. Soiled diapers must be placed in an outdoor receptacle or one out of reach of students.

(4) Ensure that toileting facilities and changing areas provide students with privacy in a separate area that is developmentally appropriate and accessible for all students, including students with disabilities. Toilet seats and changing tables must be appropriate to the age and size of students. Schools must also ensure that there is appropriate equipment for toileting and diapering as needed for students with disabilities, including any equipment that may be required by their individualized education program (IEP) or Section 504 Plan.

(5) Provide students with access to restroom facilities during the school day, including during instructional time as needed, and extracurricular time.

(6) Provide access to diapering, toileting, or restroom use without unreasonable delay.

(7) Ensure that restrooms and changing areas are safe and clean.

(8) Ensure the following essential diapering and toileting supplies and equipment are accessible at all times as appropriate per student need:

(i) toilet paper;

(ii) soap available for handwashing;

(iii) paper towels or functional hand dryers, available for hand drying;

(iv) disposable gloves, available for use in restrooms;

(v) wipes;

(vi) plastic bags for soiled clothing;

(vii) extra diapers and pull-ups; and

(viii) step stools or potty seats.

(9) Not suspend, disenroll, or exclude a student from enrollment or participation in school or school programs based on their toileting status.

(10) Manage toileting accidents with sensitivity and without punishment, exclusion, or shaming.

(11) In addition to the other provisions of this section applicable to all students, provide all supports, services, and specialized equipment to preschool and school-age students with disabilities who require assistance with toileting in accordance with their IEP or Section 504 Plan.

(12) Ensure that school personnel adhere to developmentally appropriate toileting policies and supports for younger students (three- and four-year-old prekindergarten students and preschool students with disabilities) and school-age students who require diapering and/or toileting support, recognizing the variability in toileting independence at each stage of development. Such policies should address the following:

(i) Adjust toilet learning based on individual needs; and

(ii) Work in partnership with families to support individualized toilet learning by making arrangements with families to provide an adequate supply of diapers and pull-ups and suitable clothing, so that students who soil their clothing may be changed. All clothing must be returned to parents for washing or otherwise disposed of properly.

(13) Ensure that, upon request, multilingual learners and their families receive information about toileting procedures, expectations, and supports in their preferred language.

ASSESSMENT OF PUBLIC COMMENT

Following the publication of a Notice of Proposed Rule Making in the State Register on September 24, 2025, the Department received the following comments regarding the proposed rule:

1. COMMENT: One commenter supported the Department's efforts to establish statewide protocols for toileting and diapering. Other commenters expressed support for the proposed rule, noting that changes to toileting procedures would positively impact both staff and students. Two commenters also applauded the Department's efforts to clarify procedures for school districts. Another commenter supported non-discrimination for students who are not toilet-trained and welcomed the inclusion of all P-12 students.

DEPARTMENT RESPONSE: The Department acknowledges and appreciates the supportive comments.

2. COMMENT: Some commenters expressed concerns about staffing expectations and safeguards related to toileting and diapering. Questions included whether schools should ensure the availability of male staff to support male students who may prefer a same-gender adult. Commenters also emphasized that the proposed rule does not clearly identify who should perform toileting and diapering tasks or how these tasks should be carried out, which creates uncertainty and potential risk. Commenters requested clarification on the designation of responsible staff and raised concerns about supervision during toileting or hygiene-related duties.

Additionally, some commenters raised concerns about how toileting and diapering requirements affect staffing and supervision, stating that current policies do not account for the need to maintain mandated staff-to-student ratios. Commenters

worried that educators could be placed in untenable situations where they must choose between meeting a child's needs and complying with supervision regulations. They emphasized that many early-grade classrooms, including kindergarten, often have only one adult.

One commenter noted that the proposed rule requires supervision according to "student needs" but does not specify staffing levels. The commenter opined that having two adults present during such duties is important to protect the safety and privacy of both students and staff. The commenter also argued that custodial staff are not trained for these duties. Commenters also expressed concern that current teacher and aide contracts may not permit toileting assistance, suggesting that new regulations should consider contractual limits and staffing costs.

DEPARTMENT RESPONSE: All schools are expected to follow appropriate staff-to-child ratios as required by existing regulations to ensure the health, safety, and well-being of all children. Decisions on how staff will provide diapering support must be made at the local level, based on local protocols, regulations, and operational needs. Finally, while the Department appreciates concerns related to workforce and contracting difficulties, these concerns do not affect the Department's statutory obligation to implement the establish statewide protocols for diapering and toileting of students in public schools. As a result, no changes to the proposed rule are necessary.

3. COMMENT: Two commenters raised concerns about the financial and staffing impacts of implementing the proposed regulations. The commenters opined that teachers may be stretched too thin without added support and emphasized that adequate staffing and supplies would require additional funding. Commenters also cautioned that, without new resources, schools might be forced to reallocate existing

funds—potentially reducing investments in curriculum, interventions, and other student supports.

DEPARTMENT RESPONSE: While the Department understands these concerns, there is currently no additional state funding available for implementation of the proposed statute or rule. The Department expects that all schools (as defined in the proposed rule) use their existing operational budgets and resources to implement the proposed rule. Additionally, as stated above, these concerns do not affect the Department's statutory obligation to implement the establish statewide protocols for diapering and toileting of students in public schools. Therefore, no further changes are necessary.

4. COMMENT: One commenter indicated that the proposed rule offers limited guidance on managing challenging toileting behaviors and requested developmentally appropriate strategies for addressing student refusal or regression. Another commenter asked whether disciplinary action may be appropriate for unsafe behaviors or actions (e.g., using bodily fluids in an intentionally inappropriate manner) when such behaviors are unrelated to a student's toileting status.

DEPARTMENT RESPONSE: The Department recognizes the importance of providing clear guidance to districts and programs and will develop and disseminate guidance to the field following finalization of the proposed rule. Therefore, no changes to the proposed rule are necessary.

5. COMMENT: One comment asked whether menstrual care is included in the definition of "toileting" under the regulations, noting that some students require support with this and should not be excluded from school. The commenter requested

clarification on whether these needs are protected within the regulations or addressed elsewhere.

DEPARTMENT RESPONSE: The Department recognizes the importance of ensuring that students receive support for menstrual care. Therefore, such care should be provided in the same manner as other toileting assistance and hygiene. No changes to the proposed rule are necessary.

6. COMMENT: Some commenters emphasized the need for adequate, dignified, and accessible spaces to support student toileting and diapering. Commenters stated that many classrooms lack attached bathrooms, and existing private areas—such as those in nurses’ offices—are limited. Commenters sought clearer guidance on the location where toileting and diapering should occur; e.g., “Can a diaper pail be used in lieu of an ‘outdoor’ location for disposal of soiled diapers?” and “Will a privacy screen suffice to create a ‘separate’ location in classrooms?” Commenters also questioned appropriate bathroom-to-student ratios and urged the Office of Facilities Planning to ensure that future building projects address these needs.

DEPARTMENT RESPONSE: In general, decisions regarding the appropriate spaces needed to provide diapering and toileting support are made at the local level based on local requirements and available space within each school. However, the Department recognizes the importance of providing clear guidance to districts and programs and develop and disseminate guidance to the field following finalization of the proposed rule.

Additionally, the Office of Facilities Planning requires that all capital construction work comply with the New York State Uniform Fire Prevention and Building Code, which sets minimum restroom facilities based on the building’s calculated occupancy. When

the restroom needs of a specific building population exceed these requirements, the district is responsible for determining how to provide access to these facilities and ensuring that those facilities are provided. No changes to the proposed rule are necessary.

7. COMMENT: Commenters suggested that the proposed rule should balance school support with parental responsibilities. Commenters emphasized the importance of parental accountability and involvement, noting challenges when students enter school without being toilet-trained. One commenter recommended that when students are not toilet-trained, schools should work with families to develop a plan. Commenters also raised concerns that the proposed rule may place undue responsibility on school staff, effectively “shifting responsibility for toilet training from families to teachers.” One commenter opined that toilet training is a “parent’s job” and that it is not fair to expect educators to continually “pick up the slack.” Commenters suggest clear guidance and resources for families on toileting expectations before entry into school. Others argued that the NYS Learning Standards “do not require teachers to provide toilet-training instruction,” underscoring that schools can support but should not replace the parental role. One commenter indicated that expecting schools to potty train children is “unacceptable,” stating that, unless there is a medical issue, parents should ensure children are toilet-trained before entering school.

DEPARTMENT RESPONSE: The Department recognizes the importance of schools partnering with families to develop toileting plans that support skill development and ensure consistent support across the home and school environments. While the Department aims to coordinate with other agencies that support early care and

education, the Department lacks the authority to require toileting skills as a condition of public school attendance. No changes to the proposed rule are necessary.

8. COMMENT: Some commenters emphasized the importance of defining the role of school nurses, particularly in relation to toileting and toilet training, and recommend that toileting should not be “performed by a nurse.” These commenters maintain that toileting is an activity of daily living (ADL), not a nursing function, noting that “hospital nurses have long delegated such tasks to aides.” They warn that assigning toileting and diapering responsibilities to school nurses could detract from essential medical care. Commenters expressed concern that the inclusion of school nurses in the legislation could result in school districts assigning all toileting responsibilities to school nurses, even as many schools face multiple unfilled positions and a single nurse may serve hundreds of students. Commenters argued that including ADL tasks was unsafe, unsustainable, and potentially harmful to the workforce. Other commenters highlighted the role of school medical directors and recommended annual consultations for students who have not achieved independent daytime toileting.

DEPARTMENT RESPONSE: Neither the proposed rule nor the enacted legislation suggests that diapering and toileting are the responsibility of school nurses. The proposed rule does not specify which school personnel may carry out these responsibilities, and the proposed rule provides schools with the flexibility to assign these responsibilities to appropriate staff based on their job descriptions. Thus, no further changes to the proposed rule are necessary.

9. COMMENT: One commenter expressed concern that the proposed rule does not provide sufficient practical guidance for safe and effective implementation.

Commenters also opposed assigning diapering and toileting responsibilities to teachers, noting that these tasks would increase staff workloads.

DEPARTMENT RESPONSE: The Department recognizes the importance of providing clear guidance to districts and programs and intends to develop and disseminate guidance to the field following finalization of the proposed rule.

The Department appreciates that school staff carry significant responsibilities. While the proposed rule requires schools to establish clear procedures and provide annual training to ensure a safe, hygienic, and supportive environment, the proposed rule gives schools the flexibility to assign diapering and toileting responsibilities based on job descriptions, local protocols, and operational needs. Moreover, toileting and diapering plans should be developed collaboratively through local decision-making. As a result, no changes to the proposed rule are necessary.

10. COMMENT: Two commenters requested additional guidance and training on health and safety procedures. One commenter suggested developing an online module similar to a training program on bloodborne pathogens. Another commenter emphasized the need for clear health, hygiene, and liability guidelines to protect both staff and students. One commenter indicated that there has been a “significant rise in soiling and encopresis” among pre-adolescent and adolescent students, often with no documented cause, and suggested that these challenges require closer investigation. Some commenters also raised concerns about privacy and staff with regard to nudity and exposure to bodily fluids, particularly when students require close, hands-on support. Commenters also raised concerns about “fecal residue on shared seating” and noted that many schools lack procedures to manage hygiene discreetly.

DEPARTMENT RESPONSE: To the extent commenters request further guidance, see the Department's response to comment 8.

To the extent that commenters raise concerns related to privacy and other school procedures, toileting and diapering plans are to be developed collaboratively through local decision-making. Thus, these are decisions that should be made at the local level.

With respect to the remaining comments, the issues raised are beyond the scope of the proposed rule. Thus, no change to the proposed rule is necessary.

11. COMMENT: Two commenters expressed concern that implementing the proposed rule could be time-consuming and reduce the amount of instructional time available to students.

DEPARTMENT RESPONSE: While the Department recognizes commenters' concerns related to instructional time, these concerns do not affect the Department's statutory obligation to implement the established statewide protocols for diapering and toileting of students in public schools. Moreover, the proposed rule is intended to empower all students to succeed through developmentally appropriate support, accommodation, and instruction, and diapering and toileting plans should be practical, supportive, and integrated into the learning process. Therefore, no further changes to the proposed rule are necessary.

12. COMMENT: Some commenters sought additional clarity as to the location and scope of the regulation, the definition of "unreasonable delay," and what rights faculty may have with respect to toileting and diapering.

DEPARTMENT RESPONSE: To the extent commenters request further guidance, see the Department's response to comment 8. No change to the proposed rule is necessary.

13: COMMENT: Two commenters suggest that the proposed rule should exclude preschool special education programs (4410 programs) from the definition of “school” because Chapter 361 of the Laws of 2024 was amended to remove 4410 programs to avoid duplication and ensure consistency with oversight by the Office of Children and Family Services.

DEPARTMENT RESPONSE: The Department agrees with the commenters and is proposing an amendment to remove references to preschool special education programs that are licensed or regulated by other state agencies. However, consistent with the intent of the enacted legislation, the proposed rule will continue to apply to any all other preschool special education programs.

14: COMMENT: One commenter requested that the Department include the needs of adolescent and adult students within the definition of “developmentally appropriate assistance with toilet learning” to avoid excluding older students who need specialized instruction but do not have significant disabilities.

DEPARTMENT RESPONSE: The proposed rule currently includes a provision for developmentally appropriate toileting policies for school-age students who require diapering and/or toileting support due to an intellectual or developmental disability or other impairment. This language is not intended to limit the applicability of developmentally appropriate toileting policies to students with intellectual or developmental disabilities. Therefore, the proposed rule has been amended to remove these specific disability categories to ensure that developmentally appropriate toileting policies are applicable to all students who need diapering or toileting support.

15: COMMENT: One commenter suggested that the Department should commit to a review of the proposed rule within three years of its adoption in order to seek

feedback around effectiveness; the commenter also suggested that school administrators should be required to provide an annual attestation concerning the completion of diapering and toileting training.

DEPARTMENT RESPONSE: Section 207(1)(b) of the State Administrative Procedure Act, requires that for any rule adopted on or after January 1, 2013, for which a regulatory flexibility analysis, rural area flexibility analysis, or job impact statement is required shall undergo an initial review no later than the third calendar year after the year in which the rule is adopted. Therefore, the Department will review this rule in 2028, which will be published in the January 2028 State Register for public comment. The proposed rule does not require an attestation; however, if training has not been provided as required by the proposed rule, individuals may contact the Department, which will ensure that schools come into compliance. No change to the proposed rule is necessary.

STATEMENT OF FACTS AND CIRCUMSTANCES WHICH NECESSITATE
EMERGENCY ACTION

Chapter 361 of the Laws of 2024 adds a new subdivision 62 to section 305 of the Education Law, effective March 27, 2026, which directs the Commissioner to promulgate rules and regulations establishing uniform statewide protocols for diapering and toileting of students in public schools. The statute requires that the protocols include requiring most schools—including school districts, public schools, boards of cooperative educational services (BOCES), special act school districts, approved private residential or nonresidential schools for the education of students with disabilities, state-supported schools for the blind and deaf, and certain approved preschool special education programs—to provide students and staff with safe and accessible equipment, supplies, and facilities for diapering and toileting. It also defines basic procedures to promote a safe and healthy environment. Consistent with Education Law §305, the Department proposes to add a new section 136.10 to the Regulations of the Commissioner of Education to implement the legislation described above.

Since the Board of Regents meets at fixed intervals, the earliest the proposed amendment could be adopted by regular (nonemergency) action after expiration of the 45-day public comment period provided for in the State Administrative Procedure Act (SAPA) sections 201(1) and (5) would be the May 2026 Regents meeting. Furthermore, pursuant to SAPA 203(1), the earliest effective date of the proposed rule, if adopted at the May 2026 meeting, would be June 3, 2026, the date the Notice of Adoption would be published in the State Register.

Therefore, emergency action is necessary at the January 2026 meeting, effective March 27, 2026, for the preservation of public health and safety to immediately conform the Commissioner's regulations to Chapter 361 of the Laws of 2024.

It is anticipated that the proposed rule will be presented to the Board of Regents for adoption as a permanent rule at the May 2026 Regents meeting, which is the first scheduled meeting after expiration of the 45-day public comment period mandated by SAPA for state agency rule making.