



TO: P-12 Education Committee

FROM: Angelica Infante-Green *A. Infante - Green*

SUBJECT: Proposed Amendment of Section 100.2(c)(11) of the Commissioner's Regulations to Allow an Exemption of a Student with a Disability from the Requirement for Instruction in Hands-only Cardiopulmonary Resuscitation and the Use of Automated External Defibrillators

DATE: February 16, 2016

AUTHORIZATION(S):

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SUMMARY

Issue for Decision

Should the Board of Regents adopt as a permanent rule the proposed amendment of section 100.2(c)(11) of the Commissioner's Regulations to allow an exemption from the requirement for instruction in hands-only cardiopulmonary resuscitation (CPR) and the use of automated external defibrillators (AEDs) for a student with disability who is physically or cognitively unable to perform the tasks included in such instruction?

Reason(s) for Consideration

Implementation and review of the policy required by statute (Chapter 417 of the Laws of 2014).

Proposed Handling

The proposed amendment is being presented to the P-12 Education Committee for recommendation and to the Full Board for action. In addition, emergency action is necessary to adopt the proposed amendment to immediately ensure that students identified with a disability that precludes their ability to participate in hands-only CPR and the use of AEDs may continue to be exempted from the instruction requirement. A

statement of the facts and circumstances which necessitate emergency action is attached.

Procedural History

At the November 2015 Regents meeting, the proposed amendment was discussed by the P-12 Education Committee and adopted as an emergency action by the full Board, effective November 17, 2015. A Notice of Emergency Adoption and Proposed Rule Making was published in the State Register on December 2, 2015 for a 45-day public comment period.

A second emergency action was proposed at the January 2016 Regents meeting to keep the rule continuously in effect until it could be presented for adoption at the February 2016 Regents meeting and take effect as a permanent rule. However, the Full Board declined to vote to adopt the second emergency action and instead referred the rule back to the P-12 Committee for further discussion. The November emergency rule expired on February 14, 2016. The proposed amendment is now being presented for adoption as a permanent rule at the February Regents meeting.

Since publication of a Notice of Proposed Rule Making in the State Register on December 2, 2015, the Department received two comments on the proposed amendment. Attached is the full text of the proposed terms of the proposed amendment and the Assessment of Public Comment. Supporting materials are available upon request from the Secretary to the Board of Regents.

Background Information

Effective October 21, 2014, Chapter 417 of the Laws of 2014 amended Education Law §305 to require the Commissioner to make a recommendation to the Board of Regents regarding a potential new mandate for required instruction in CPR and the use of AEDs in senior high schools. The law further required that prior to making this recommendation, the Commissioner seek the recommendations of teachers, school administrators, educators, and others with educational expertise in such curriculum, as well as comments from parents, students, and other interested parties prior to making a recommendation to the Board of Regents.

At the April 2015 Regents meeting, the Department presented a discussion item outlining the steps it took in compliance with the requirements of Chapter 417 of the Laws of 2014, including feedback from stakeholders regarding the impact of mandating such a course. In consideration of this feedback, and recognizing that CPR/AED affects the vital matters of life and death, at their June 2015 meeting, the Board proposed the addition of a new section 100.2(c)(11) of the Commissioner's regulations to require hands-only instruction in CPR and instruction in the use of AEDs in senior high schools. The proposed rule was adopted at the September 2015 Regents meeting and became effective October 7, 2015.

Under new section 100.2(c)(11) of Commissioner's regulations, students are required to complete hands-only instruction in CPR and instruction in the use of AEDs

at least once between grades 9-12 before graduation. The standards for such instruction must be based on a nationally recognized instructional program that utilizes the most current guidelines for cardiopulmonary resuscitation and emergency cardiovascular care issued by the American Heart Association or a substantially equivalent organization and be consistent with the requirements of the programs adopted by the American Heart Association or the American Red Cross, and must incorporate instruction designed to:

- recognize the signs of a possible cardiac arrest and to call 911;
- provide an opportunity to demonstrate the psychomotor skills necessary to perform hands-only CPR; and
- provide awareness in the use of an AED.

Most students with disabilities have the ability to complete the instruction in hands-only CPR and the use of AEDs requirement described above. However, the Department recognizes that there may be some students who, due to the nature of their disability, will not be able to physically or cognitively perform the tasks included in such instruction (e.g., demonstrating the psychomotor (hands-on) skills to perform CPR). The proposed amendment would allow the Committee on Special Education or Multidisciplinary Team pursuant to Section 504 of the Rehabilitation Act of 1973 to exempt a student identified as having a disability that precludes his or her ability to participate in instruction in hands-only CPR and the use of AEDs from the instruction requirement in section 100.2(c)(11) of the Commissioner's regulations. The student's individualized education program or Section 504 accommodation plan would need to indicate that such student is physically or cognitively unable to perform the tasks included in the instruction in hands-only CPR and the use of AEDs.

Recommendation

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

VOTED: That a new subparagraph (iv) of paragraph (11) of subdivision (c) of section 100.2 of the Regulations of the Commissioner be added as submitted, effective March 9, 2016; and it is further

VOTED: That a new subparagraph (iv) of paragraph (11) of subdivision (c) of section 100.2 of the Regulations of the Commissioner be added as submitted, effective February 23, 2016, as an emergency action upon a finding by the Board of Regents that such action is necessary for the preservation of the general welfare in order to immediately ensure that students identified with a disability that precludes their ability to participate in hands-only CPR and the use of AEDs may continue to be exempted from the instruction requirement in the regulation.

Timetable for Implementation

If adopted at the February 2016 Regents meeting, the emergency rule will take effect on February 23, 2016 and the permanent rule will take effect on March 9, 2016.

Attachment

AMENDMENT OF THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to Education Law sections 101, 207, 305, 308, 804-c, 804-d, 4403 and Chapter 417 of the Laws of 2014.

A new subparagraph (iv) of paragraph (11) of subdivision (c) of section 100.2 is added, effective March 9, 2016, as follows:

(iv) A student identified with a disability that precludes his or her ability to participate in hands-only cardiopulmonary resuscitation and the use of an automated external defibrillator may be exempted from the instruction requirement in this paragraph if the student's individualized education program developed in accordance with section 200.4 of this Title or accommodation plan developed pursuant to section 504 of the Rehabilitation Act of 1973 states that the student is physically or cognitively unable to perform the tasks included in the instruction.

8 NYCRR §100.2(c)(11)(iv)

STATEMENT OF FACTS AND CIRCUMSTANCES WHICH NECESSITATE EMERGENCY ACTION

The proposed amendment is necessary to implement Regents policy to allow an exemption of a student identified as having a disability that precludes his or her ability to participate in hands-only instruction in cardiopulmonary resuscitation (CPR) and instruction in the use of Automated External Defibrillators (AEDs) from the new instruction requirement in section 100.2(c)(11) of the Commissioner's regulations, which became effective October 7, 2015.

At the November 2015 Regents meeting, the proposed amendment was discussed by the P-12 Education Committee and adopted as an emergency action by the full Board, effective November 17, 2015. A Notice of Emergency Adoption and Proposed Rule Making was published in the State Register on December 2, 2015 for a 45-day public comment period. A second emergency action was proposed at the January 2016 Regents meeting to keep the rule continuously in effect until it could be presented for adoption at the February 2016 Regents meeting and take effect as a permanent rule. However, the full Board declined to vote to adopt the second emergency action and instead referred the rule back to the P-12 Committee for further discussion. The November emergency rule expired on February 14, 2016.

The proposed amendment has now been adopted as a permanent rule at the February 22-23, 2016 Regents meeting. Pursuant to SAPA §203(1), the earliest effective date of the proposed amendment, if adopted at the February meeting, would be March 9, 2016, the date a Notice of Adoption will be published in the State Register. However, the instruction requirement in section 100.2(c)(11) became effective on

October 7, 2015 and is now in effect for the 2015-16 school year. While most students with disabilities have the ability to complete the instruction in hands-only CPR and the use of AEDs, the Department recognizes that there may be some students who, due to the nature of their disability, will not be able to physically or cognitively perform the tasks included in such instruction (e.g., demonstrating the psychomotor (hands-on) skills to perform CPR). These students should be allowed an exemption from the requirement for instruction in CPR and the use of AEDs.

Emergency action is therefore necessary for the preservation of the general welfare in order to immediately ensure that students identified with a disability that precludes their ability to participate in hands-only CPR and the use of AEDs may continue to be exempted from the instruction requirement in the regulation.

AMENDMENT OF THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to Education Law sections 101, 207, 305, 308, 804-c, 804-d, 4403 and Chapter 417 of the Laws of 2014.

A new subparagraph (iv) of paragraph (11) of subdivision (c) of section 100.2 is added, effective February 23, 2016, as follows:

(iv) A student identified with a disability that precludes his or her ability to participate in hands-only cardiopulmonary resuscitation and the use of an automated external defibrillator may be exempted from the instruction requirement in this paragraph if the student's individualized education program developed in accordance with section 200.4 of this Title or accommodation plan developed pursuant to section 504 of the Rehabilitation Act of 1973 states that the student is physically or cognitively unable to perform the tasks included in the instruction.

8 NYCRR §100.2(c)(11)(iv)

ASSESSMENT OF PUBLIC COMMENT

Since publication of a Notice of Proposed Rule Making in the State Register on December 2, 2015, the State Education Department (SED) received the following comment on the proposed amendment.

1. COMMENT:

It may be beneficial to include in this section of regulations a segment on training to perform the Heimlich maneuver on persons or self who appear to be choking in school-home-community settings.

DEPARTMENT RESPONSE:

Consistent with the requirements of Chapter 417 of the Laws of 2014, at their September 2015 meeting, the Board adopted a new section 100.2(c)(11) of the Commissioner's regulations to require hands-only instruction in CPR and instruction in the use of AEDs in senior high schools, effective October 7, 2015. The proposed amendment merely allows an exemption of a student identified as having a disability that precludes his or her ability to participate in hands-only instruction in CPR and instruction in the use of AEDs from the instruction requirement in section 100.2(c)(11) of the Commissioner's regulations. Accordingly, to the extent it seeks to include instruction in the Heimlich maneuver, the comment is beyond the scope of this proposed rulemaking. However, nothing would preclude a school district from offering students instruction in the Heimlich maneuver.

2. COMMENT:

One commenter opposed the proposed amendment to the extent that it requires a student's Individualized Education Program (IEP) or 504 Plan to state that the student

is exempted from the CPR/AED instruction requirement. Recommended amending the language so that it does not identify who at the school must make this determination or how this determination must be memorialized for the following reasons: participation in this instruction does not have free appropriate public education (FAPE) implications and requiring exemption be on a student's IEP may elevate participation or lack of participation to a component of FAPE; every decision about least restrictive environment does not need to be on the IEP to this degree of specificity; regulations give schools discretion in how to provide CPR/AED instruction and the determination about a student's participation heavily depends on how each school complies; committees on special education (CSEs) and multidisciplinary teams (MDTs) would require substantial guidance on considerations in making this determination based on the workings of the particular school, rather than student's needs, and knowledge of the program; and school is best situated to determine whether a student is able to participate in and benefit from this instruction and this determination should be made by appropriate staff. Suggest allowing those providing the instruction to modify the instruction without needing to put this modification on an IEP/Section 504 Plan; and if a exemption is needed, discussing this with the parent and documenting the final decision in the same manner as students who received the instruction.

DEPARTMENT RESPONSE:

We do not agree that participation in the required instruction in CPR and instruction in the use of AEDs does not need to be documented in a student's IEP/504 Plan. In accordance with section 200.4(d) of the Commissioner's regulations, a student's IEP must provide an explanation of the extent, if any, to which the student will not participate in regular class and/or extracurricular and other nonacademic activities with nondisabled peers. The instruction in hands-only CPR and AED devices pursuant

to section 100.2(c)(11) of the Commissioner's regulations is required for all students once in grades 9-12. Therefore, a student with a disability's nonparticipation in this regular class, based on the severity of his or her cognitive or physical disability, would be required to be documented on the student's IEP. In making the determination, the CSE must consider whether the student would be able to participate in the CPR/AED instruction being provided by the school with the use of appropriate program modifications/supplementary aids and services. Such decision must be made on an individual basis based on the unique needs of the student.