



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

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

**SUBJECT:** Proposed Amendment of Section 136.6 of the Regulations of the Commissioner of Education Relating to Written Informational Material for the Authorized Use of Epinephrine Auto-Injectors

**DATE:** February 1, 2024

**AUTHORIZATION(S):** *Don M. ... Betty ...*

### SUMMARY

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

Should the Board of Regents adopt the proposed amendment of section 136.6 of the Regulations of the Commissioner of Education relating to written informational material for the authorized use of epinephrine auto-injectors?

#### **Reason for Consideration**

Required by State statute (Chapter 422 of the Laws of 2023).

#### **Proposed Handling**

The proposed amendment is submitted to the Full Board for adoption as an emergency rule at the February 2024 Regents meeting. A copy of the proposed rule (Attachment A) and a statement of facts and circumstances justifying emergency action (Attachment B) are attached.

#### **Procedural History**

The proposed amendment was presented to the P-12 Education Committee for discussion and recommended to the Full Board for adoption as an emergency rule at the December 2023 meeting of the Board of Regents. A Notice of Emergency Adoption and Proposed Rule Making was published in the State Register on December 27, 2023.

Because the December 2023 emergency action will expire on March 10, 2024, a second emergency action is necessary to ensure the emergency rule remains continuously in effect until it can be permanently adopted at the April 2024 Regents meeting.

A Notice of Emergency Adoption will be published in the State Register on March 27, 2024. Supporting materials are available upon request to the Secretary of the Board of Regents.

### **Background Information**

Education Law §921-a,<sup>1</sup> added by Chapter 424 of the Laws of 2014, permits school districts, boards of cooperative educational services (BOCES), county vocational education and extension boards (CVEEBs), charter schools, and non-public elementary and secondary schools (covered schools) in New York State to provide and maintain epinephrine auto-injectors on-site. This law also authorizes employees of covered schools to administer epinephrine auto-injectors in the event of an emergency pursuant to the requirements of Public Health Law §3000-c.<sup>2</sup>

On September 15, 2023, the Governor signed Chapter 422 of the Laws of 2023 (Chapter 422), which adds a new subdivision to Education Law §921-a that requires covered schools to provide all teachers with written informational material, created and approved by the Commissioner of Health, on the use of an epinephrine auto-injector.

The proposed amendment conforms section 136.6 of the Commissioner's regulations with Chapter 422 by adding this requirement.

### **Related Regents Items**

March 2015: [Proposed Addition of Section 136.6 of the Commissioner's Regulations, Relating to School Use of Epinephrine Auto Injectors](http://www.regents.nysed.gov/common/regents/files/meetings/Mar%202015/315brca5.pdf)  
(<http://www.regents.nysed.gov/common/regents/files/meetings/Mar%202015/315brca5.pdf>)

March 2017: [Proposed Amendments to Section 136.6 of the Commissioner's Regulations Relating to School Health Services](http://www.regents.nysed.gov/common/regents/files/317p12a3.pdf)  
(<http://www.regents.nysed.gov/common/regents/files/317p12a3.pdf>)

December 2023: [Proposed Amendment of Section 136.6 of the Regulations of the Commissioner of Education Relating to Written Informational Material for the Authorized Use of Epinephrine Auto-Injectors](https://www.regents.nysed.gov/sites/regents/files/1223p12a1.pdf)  
(<https://www.regents.nysed.gov/sites/regents/files/1223p12a1.pdf>)

### **Recommendation**

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

VOTED: That section 136.6 of the Regulations of the Commissioner of Education be amended, as submitted, effective March 11, 2024, as an emergency rule upon a finding by the Board of Regents that such action is necessary for the preservation of public health

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<sup>1</sup> This section was added as section 921 of the Education Law and renumbered as 921-a by Chapter 200 of the Laws of 2017.

<sup>2</sup> Education Law §921-a and Public Health Law section 3000-c were subsequently amended by Chapter 373 of the Laws of 2016.

and safety to immediately conform the Commissioner's regulations to Chapter 422 of the Laws of 2023 and to ensure the emergency action taken at the December 2023 meeting remains continuously in effect.

### **Timetable for Implementation**

If adopted as an emergency rule at the February 2024 Regents meeting, the emergency rule will become effective March 11, 2024. It is anticipated that the proposed amendment will be presented for permanent adoption at the April 2024 Regents meeting, after publication of the proposed amendment in the State Register and expiration of the 60-day public comment period required under the State Administrative Procedure Act. If adopted at the April 2024 meeting, the proposed amendment will become effective as a permanent rule on May 1, 2024.

AMENDMENT TO THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to Education Law sections 207, 305, and 921-a and Chapter 422 of the Laws of 2023.

1. Section 136.6 of the Regulations of the Commissioner of Education is amended by adding a new subdivision (d) to read as follows:

(d) School districts, boards of cooperative educational services, county vocational education and extension boards, charter schools, and non-public elementary and secondary schools in this state that are authorized to provide and maintain epinephrine auto-injectors on-site pursuant to Education Law §921-a shall provide all teachers with written informational material on the use of an epinephrine auto-injector that has been created and approved by the commissioner of health.

STATEMENT OF FACTS AND CIRCUMSTANCES  
WHICH NECESSITATES EMERGENCY ACTION

Education Law §921-a,<sup>3</sup> added by Chapter 424 of the Laws of 2014, permits school districts, boards of cooperative educational services (BOCES), county vocational education and extension boards (CVEEBs), charter schools, and non-public elementary and secondary schools (“covered schools”) in New York State to provide and maintain epinephrine auto-injectors on-site. This law also authorizes employees of covered schools to administer epinephrine auto-injectors in the event of an emergency pursuant to the requirements of Public Health Law §3000-c.<sup>4</sup>

On September 15, 2023, the Governor signed Chapter 422 of the Laws of 2023 (Chapter 422), which adds a new subdivision to Education Law §921-a that requires covered schools to provide all teachers with written informational material, created and approved by the Commissioner of Health, on the use of an epinephrine auto-injector.

The proposed amendment conforms section 136.6 of the Commissioner’s regulations with Chapter 422 by adding this requirement.

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 December 2023 meeting of the Board of Regents, effective December 12, 2023. 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 60-day public comment period provided for in the State Administrative Procedure Act (SAPA) sections

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<sup>3</sup> This section was added as section 921 of the Education Law and renumbered as 921-a by Chapter 200 of the Laws of 2017.

<sup>4</sup> Education Law §921-a and Public Health Law section 3000-c were subsequently amended by Chapter 373 of the Laws of 2016.

201(1) and (5) would be the April 15-16, 2024 Regents meeting. Furthermore, pursuant to SAPA 203(1), the earliest effective date of the proposed rule, if adopted at the April meeting, would be May 1, 2024, the date the Notice of Adoption would be published in the State Register.

However, the emergency rule will expire March 10, 2023. Therefore, a second emergency action is necessary at the February 2024 meeting, effective March 11, 2024, for the preservation of public health and safety in order to immediately conform the Commissioner's regulations to Chapter 422 of the Laws of 2023 and to ensure that the emergency action taken at the December 2023 meeting remains continuously in effect until the rule can be permanently adopted.

It is anticipated that the proposed rule will be presented to the Board of Regents for adoption as a permanent rule at the April 2024 Regents meeting, which is the first scheduled meeting after expiration of the 60-day public comment period mandated by SAPA for state agency rulemaking.