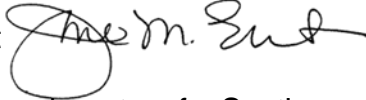






TO: P-12 Education Committee

FROM: Jhone M. Ebert 

SUBJECT: Proposed Amendment of Sections 155.17 of the Commissioner's Regulations relating to School Safety Plans and Fire and Emergency Drills

DATE: June 6, 2016

AUTHORIZATION(S):  

SUMMARY

Issue for Decision

Should the Board of Regents approve, as an emergency action, the proposed amendment of section 155.17 of Commissioner's Regulations in regard to school safety plans and fire and emergency drills to conform to statute?

Reason(s) for Consideration

Required by statute (Part B of Chapter 54 of the Laws of 2016).

Proposed Handling

The proposed rule is being presented to the P-12 Education Committee for recommendation and to the Full Board for adoption as an emergency rule at the June 2016 Regents meeting. A statement of facts and circumstances which necessitate emergency action is attached. Supporting materials are available upon request from the Secretary to the Board of Regents.

Procedural History

A Notice of Emergency Adoption and Proposed Rule Making will be published in the State Register on June 29, 2016. A copy of the proposed rule is attached. 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 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. Historically, school emergency planning focused on fire safety through regular fire drills in schools. As a result of good planning and modern safety systems such as fire alarms and sprinklers, fire-related fatalities in public schools are now nearly nonexistent in the United States. However, it has become clear that for schools to be equally as prepared for a possible occurrence of violence, expanded emergency response drills, including lock-down drills, are essential.

Due to the importance of school preparedness in an emergency, the New York State School Safety Improvement Team—which is composed of staff from the Governor's Office of Public Safety, the New York State Police, the New York State Education Department, the New York State Division of Homeland Security and Emergency Services, and the New York State Division of Criminal Justice Services—recommended statutory amendments to improve the scope of school emergency response planning. These changes included reducing the required number of annual fire drills as well as adding a new requirement that schools conduct four annual lock-down drills. As such, the 2016-17 enacted State budget included amendments to Education Law Sections 2801-a and 807 (Chapter 54 of the Laws of 2016). These amendments will take effect on July 1, 2016. Highlights of these changes are below.

Amendments to Education Law § 2801-a: School Safety Plans

1. In addition to the existing notification requirements in the event of a violent incident, the statute now requires that each district develop policies and procedures for contacting parents, guardians, or persons in a parental relation to a student in the event of an implied or direct threat of violence by a student against themselves, including threat of suicide.
2. The statute includes a new requirement that each district submit certification to NYSED that all district and school staff have undergone annual training on the emergency response plan, and that the school safety training include components on violence prevention and mental health. New employees hired after the start of the school year must receive training within 30 days of hire. The Department will require schools to certify that all school staff

received this training by September 15th of each school year, or within 30 days of hire, whichever is sooner.¹

3. The amendments require district-wide safety plans to include the designation of a chief emergency officer who is responsible for coordinating communication between staff and law enforcement and first responders and for ensuring staff understanding of the district-level safety plan. The chief emergency officer shall also be responsible for ensuring completion and yearly update of building-level emergency response plans. The building-level emergency response plan shall be kept confidential and shall not be disclosed except to authorized department staff and law enforcement officers.²
4. The amendments require that building-level emergency response plans include policies and procedures for response to emergency situations such as those requiring evacuation, sheltering and lock-down (evacuation routes, shelter sites, procedures for addressing medical needs, transportation and emergency notification of parents and guardians). The building-level emergency response team is now expanded to include fire officials, and at the discretion of the board, a student may be permitted to participate in the school safety team, but may not have access to confidential building-level emergency response plans or be present where confidential building-level emergency response plans are being discussed.
5. The statute eliminated the provision allowing single building districts to create a building-level emergency response plan that contains all aspects of the district plan. However, the statute now authorizes the Commissioner, in consultation with the Superintendent of State Police, to develop an appeals process from duplicative requirements of district-wide school safety plans for districts with only one school building.
6. The amendments require the district-wide safety plans to be made available for public comment, however, to comply with the confidentiality provisions of this section, public comment is no longer required for the summary of the building-level emergency response plan.
7. Additional technical amendments were made to the statute to eliminate certain expired provisions relating to Project SAVE Legislation, making the language throughout more consistent and easier to understand.

¹ Certification that staff has received training as indicated in #2 will be collected as part of the Basic Educational Data System (BEDS) collection beginning in October 2016.

² Information relating to the designation of the Chief Emergency Officer will be collected as part of BEDS beginning in October 2016.

8. The amendments removed the Commissioner's authority to provide a waiver from the requirements of this section for a two-year period for schools that had plans in substantial compliance prior to the effective date of this section.

Amendments to Education Law §§ 807(1-a), 807 (b): Fire and Emergency Drills

1. The amendments expanded fire drill requirements to also include emergency drills to prepare students to be able to respond appropriately in the event of a sudden emergency.
2. The statute now requires twelve drills be conducted each school year, four of which must be lock-down drills, the remaining eight are required to be evacuation drills.
3. There is still a requirement that eight of the required twelve drills must be completed in the first half of the school year. However, the date of completion has been changed from December 1 to December 31 of each school year.

The statute now explicitly requires schools to conduct lock-down drills, which are essential, because they prepare students and staff to respond to the highest level of threat with the most urgent action and the least margin for error. The goal is to have schools conduct drills where they immediately clear hallways, lock doors and take positions out of sight to practice their ability to put the building into a protective posture as quickly as possible. These emergency measures allow time for responding law enforcement to arrive on scene and neutralize the threat. If possible, law enforcement should be involved in the drills to help prepare students and staff for their interactions and release from lock-down by uniformed officers. However, law enforcement involvement is not required by the new legislative mandate. Other protective actions such as lock-out or shelter in place are emergency actions that are usually preceded by some degree of warning time and do not require the immediate response necessary for a lock-down. While the school should be well versed in their lock-out and shelter in place protocols, lock-down is the only type of protective action that is specifically required by the statute.

The proposed amendment makes conforming changes to section 155.17 of the Commissioner's regulations to implement these new statutory requirements.

Recommendation

Staff recommends that the Regents take the following action:

VOTED: That section 155.17 of the Regulations of the Commissioner is amended, as submitted, effective July 1, 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 to immediately establish standards for the provision, maintenance and administration of school safety planning pursuant to Education Law section 2801-a and

Education Law sections 807(1-a) and 807(b), as amended, by Part B of Chapter 54 of the Laws of 2016, and thus ensure the timely implementation of the statute on its effective date.

Timetable for Implementation

If adopted at the June Regents meeting, the emergency rule will become effective on July 1, 2016, the effective date of Part B of Chapter 54 of the Laws of 2016. Following the 45-day public comment period required under the State Administrative Procedure Act, it is anticipated that the proposed rule will be presented for permanent adoption at the September 2016 Regents meeting.

8 NYCRR §155.17

STATEMENT OF FACTS AND CIRCUMSTANCES WHICH NECESSITATE
EMERGENCY ACTION

The proposed rule is necessary to implement certain provisions of Part B of Chapter 54 of the Laws of 2016, which amended sections 807 and 2801-a of the Education Law, effective July 1, 2016 relating to fire and emergency drills, district-wide school safety plans, and building-level emergency response plans.

Since the Board of Regents meets at fixed intervals, the earliest the proposed rule can be presented for regular (non-emergency) adoption, after expiration of the required 45-day public comment period provided for in the State Administrative Procedure Act (SAPA) sections 201(1) and (5), would be the September 12-13, 2016 Regents meeting. Furthermore, pursuant to SAPA section 203(1), the earliest effective date of the proposed rule, if adopted at the September meeting, would be September 28, 2016, the date a Notice of Adoption would be published in the State Register. However, the provisions of Part B of Chapter 54 of the Laws of 2016 become effective on July 1, 2016. Therefore, emergency action is necessary at the June 2016 Regents meeting for the preservation of the general welfare in order to immediately implement the amendments to fire and emergency drills, district-wide school safety plans, and building-level emergency response plans in accordance with Part B of Chapter 54 of the

Laws of 2016, and thus ensure the timely implementation of the statute on its effective date.

It is anticipated that the proposed rule will be presented for adoption as a permanent rule at the September 12-13, 2016 Regents meeting, which is the first scheduled meeting after expiration of the 45-day public comment period prescribed in the State Administrative Procedure Act for State agency rule makings.

Attachment B

AMENDMENT OF THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to Education Law sections 101, 207, 305, 2801-a, and Chapter 54 of the Laws of 2016.

1. Section 155.17 of the Regulations of the Commissioner of Education is amended, effective July 1, 2016, as follows:

§155.17

[(a) ...]

(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 of each succeeding year] July 1 for the 2002-2003 through the 2015-2016 school years and by September 1 for the 2016-2017 school year and each subsequent September 1 thereafter, a comprehensive district-wide school safety plan and building-level [school safety] 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 [school safety] emergency response team, as such terms are defined in subdivision [(c)] (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. [A school district having only one school building shall develop a single building-level school safety plan, which shall also fulfill all requirements for development of a district-wide plan to insure the safety and health of children and staff and to insure integration and coordination with similar emergency planning at the municipal, county and State levels.] 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.

[(c)] (b) *Definitions.* As used in this section:

(1)...

(2)...

(3)...

(4) *Emergency* means a situation, including but not limited to a disaster[,], that requires immediate action, occurs unpredictably, and poses a threat of injury or loss of life to students or school personnel or of severe damage to school property.

(5)...

(6)...

(7)...

(8)...

(9)...

(10) Lock-down means to immediately clear the hallways, lock and/or barricade doors, hide from view, and remain silent while readying a plan of evacuation as a last resort. Lock-down will only end upon physical release from the room or secured area by law enforcement.

[(10)] (11) Building-level [school safety] emergency response plan means a building-specific school emergency response plan that addresses crisis intervention, emergency response and management at the building level and has the contents prescribed in paragraph [(e)](c)(2) of this section.

[(11)] (12) Building-level [school safety] emergency response team means a building-specific team appointed by the building principal, in accordance with regulations or guidelines prescribed by the board of education, the chancellor in the case of New York City, or other governing body. The building-level emergency response team is responsible for the designation of the emergency response team and the development of the building-level emergency response plan and its required components. The building-level emergency response team shall include, but not be limited to, representatives of teacher, administrator, and parent organizations, school safety personnel, other school personnel, community members, local law enforcement officials, local ambulance, fire officials or other emergency response agencies, and any other representatives the school board, chancellor or other governing body deems

appropriate.

[(12)] (13) *District-wide school safety plan* means a comprehensive, multi-hazard school safety plan that covers all school buildings of the school district, BOCES or county vocational education and extension board, that addresses crisis intervention, emergency response and management at the district level and has the contents prescribed in paragraph [(e)](c)(1) of this section.

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

[(14)] (15) *Emergency response team* means a building-specific team designated by the building-level [school safety] emergency response team that [includes appropriate] is comprised of school personnel, [local] law enforcement officials, fire officials, and representatives from local, regional and/or State emergency response agencies and assists the school community in responding to a [serious] violent incident

or emergency. In a school district in a city having a population of more than one million inhabitants, such emergency response team may be created on the district-level with building-level participation, and such district shall not be required to establish a unique team for each of its schools.

[(15)] (16) *Post-incident response team* means a building-specific team designated by the building-level [school safety] emergency response team that includes appropriate school personnel, medical personnel, mental health counselors and others who can assist the school community in coping with the aftermath of a [serious] violent incident or emergency. In a school district in a city having a population of more than one million inhabitants, such post-incident response team may be created on the district-level with building-level participation, and such district shall not be required to establish a unique team for each of its schools.

[16] (17) . . .

[17](18) . . .

[(d) . . .]

[(e)] (c) *District-wide [School] school safety plans and building-level emergency response plans*. District-wide school safety plans and building-level [school safety] emergency response plans shall be designed to prevent or minimize the effects of [serious] 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:

[(i)] . . .

(ii) . . .

[(iii)] (i) policies and procedures for responding to implied or direct threats of violence by students, teachers, other school personnel and visitors to the school, including threats by students against themselves, which for the purposes of this subdivision shall include suicide;

[(iv)] (ii)...

[(v)] (iii)...

[(vi)] (iv)...

[(vii)] (v) ...

[(viii)] (vi)...

[(ix)] (vii)...

[(x)] (viii)...

[(xi)] (ix)...

(x) policies and procedures for contacting parents, guardians or persons in parental relation to an individual student of the district in the event of an implied or direct threat of violence by such student against themselves, which for the purposes of this subdivision shall include suicide;

[(xii)] (xi)...

[(xiii)] (xii)...

[(xiv)] (xiii) policies and procedures for annual multi-hazard school safety training

for staff and students, provided that the district must certify to the commissioner that all staff have undergone annual training by September 15, 2016 and each subsequent September 15 thereafter on the building-level emergency response plan which must include components on violence prevention and mental health, provided further that new employees hired after the start of the school year shall receive such training within 30 days of hire or as part of the district's existing new hire training program, whichever is sooner.

[(xv)] (xiv)...

[(xvi)] (xv)...

[(xvii)] (xvi)...

[(xviii)] (xvii)...

[(xix)] (xviii) in the case of a school district, except in a school district in a city having more than one million inhabitants, a system for informing all educational agencies within such school district of a disaster[.]; and

(xix) the designation of the superintendent, or superintendent's designee, as the district chief emergency officer whose duties shall include, but not be limited to:

(a) coordination of the communication between school staff, law enforcement, and other first responders;

(b) lead the efforts of the district-wide school safety team in the completion and yearly update of the district-wide school safety plan and the coordination of the district-wide plan with the building-level emergency response plans;

(c) ensure staff understanding of the district-wide school safety plan;

(d) ensure the completion and yearly update of building-level emergency

response plans for each school building;

(e) assist in the selection of security related technology and development of policies for the use of such technology;

(f) coordinate appropriate safety, security, and emergency training for district and school staff, including required training in the emergency response plan; and

(g) ensure the conduct of required evacuation and lock-down drills in all district buildings as required by Education Law section 807.

(h) ensure the completion and yearly update of building-level emergency response plans by the dates designated by the commissioner.

(2) [School] Building-level emergency response plan. A [school] building-level emergency response plan shall be developed by the building-level [school safety] emergency response team, shall be kept confidential, including but not limited to the floor plans, blueprints, schematics or other maps of the immediate surrounding area, and shall not be disclosed except to authorized department or school staff, and law enforcement officers, and shall include the following elements:

(i) policies and procedures for the [safe evacuation of students, teachers, other school personnel and visitors to the school in the event of a serious violent incident or other emergency which may occur before, during or after school hours] response to emergency situations, such as those requiring evacuation, sheltering, and lock-down, which shall include, at a minimum, the description of plans of action for evacuation [and], sheltering, lock-down, evacuation routes and shelter sites, and procedures for addressing medical needs, transportation and emergency notification to persons in parental relation to a student;

(ii)...

(iii) [procedures for assuring that crisis response, fire and law enforcement officials have access to] floor plans, blueprints, schematics or other maps of the school interior, school grounds and road maps of the immediate surrounding area;

(iv)...

(v) . .

(vi) coordination of the [school safety] building-level emergency response plan with the statewide plan for disaster mental health services to assure that the school has access to Federal, State and local mental health resources in the event of a violent incident;

(vii) procedures for an annual review of the building-level emergency response plan and the conduct of drills and other exercises to test components of the building-level emergency response plan, including the use of tabletop exercises, in coordination with local, [and] county, and state emergency responders and preparedness officials;

(viii) . . .

(ix) . . .

(3) Each board of education, chancellor or other governing body shall make each district-wide [and building-level school] safety plan available for public comment at least 30 days prior to its adoption[, provided that only a summary of each building-level emergency response plan shall be made available for public comment]. Such district-wide [and building-level] 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 its district-

wide [comprehensive] safety plan with the commissioner and all amendments to such plan shall be filed with the commissioner no later than 30 days after their adoption. Each board of education, chancellor or other governing body or officer shall ensure that a copy of each building-level [safety] emergency response plan and any amendments thereto, [shall be] is filed with 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 15 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.

[(4) . . .]

(f) . . .

(g) . . .

(h) . . .

(i) . . .

(j) Fire and Emergency Drills. Each school district and board of cooperative educational services shall, at least once every school year, and where possible in cooperation with local county emergency preparedness plan officials, conduct one test of its [emergency plan or its] emergency response procedures under each of its building-level emergency response [school safety] plans, including sheltering, lock-down, or early dismissal, at a time not to occur more than 15 minutes earlier than the normal dismissal time.

(1)...

(2)...

(3)...

(k) . . .

(l) . . .

(m) . . .