





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

**FROM:** Betty A. Rosa 

**SUBJECT:** Proposed Amendment to Section 155.17 of the Regulations of the Commissioner of Education Relating to District-wide School Safety Plans

**DATE:** May 27, 2021

**AUTHORIZATION(S):** 

### **SUMMARY**

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

Should the Board of Regents adopt the proposed amendment to section 155.17 of the Regulations of the Commissioner of Education relating to district-wide school safety plans?

#### **Reason(s) for Consideration**

Required by State statute (Chapter 168 of the Laws of 2020 and Chapter 30 of the Laws of 2021).

#### **Proposed Handling**

The proposed amendment will be presented to the Full Board for adoption as an emergency measure at its June 2021 meeting. A copy of the proposed rule is attached (Attachment A), as well as a statement of facts and circumstances justifying emergency action (Attachment B).

#### **Procedural History**

The proposed rule was presented to the P-12 Committee for discussion and to the Full Board for adoption as an emergency rule at its April 2021 Regents meeting, effective April 13, 2021. A Notice of Emergency Adoption and Proposed Rule Making was published in the State Register on April 28, 2021 for a 60-day public comment period. Because the April emergency action will expire on July 11, 2021, a second emergency action is necessary to ensure the emergency rule remains continuously in

effect until it can be permanently adopted. Supporting materials are available upon request from the Secretary to the Board of Regents.

### **Background Information**

On September 7, 2020 (Labor Day), Governor Cuomo signed into law Chapter 168 of the Laws of 2020 that requires public employers, including public school districts, to adopt a continuation of operations plan in the event that the Governor declares a State disaster emergency involving a communicable disease. The legislation (S.8617-B / A.10832) amended subdivision 2 of section 2801-a of New York Education Law to require that district-wide school safety plans include protocols for responding to a declared State disaster emergency involving a communicable disease that are “substantially consistent” with the provisions of section 27-c of the Labor Law. A technical chapter amendment (S.01295 / A.009980) to the legislation became effective February 16, 2021 (Chapter 30 of the Laws of 2021).

As per section 27-c of the Labor Law, the operations plan must include, but is not limited to:

- a) A list and description of the types of positions considered essential in the event of a State-ordered reduction of in-person workforce. For this purpose, essential is defined as required to be physically present at a work site to perform his or her job. Such designation may be changed at any time at the sole discretion of the employer.
- b) A description of protocols the employer will follow in order for nonessential employees to telecommute including, but not limited to, facilitating or requesting the procurement, distribution, downloading, and installation of any needed technology, including software, data, and the transferring of office phone lines to work or personal cell phones as practicable or applicable to the workplace, and may include devices.
- c) A description of how the employer will, to the extent possible, stagger work shifts of essential employees to reduce overcrowding on public transportation and at worksites.
- d) Protocols the employer will implement to procure personal protective equipment (PPE), defined as equipment worn to minimize exposure to hazards, including gloves, masks, face shields, foot and eye protection, protective hearing devices, respirators, hard hats, and disposable gowns and aprons and, for essential employees, a quantity sufficient to provide PPE to each essential employee to meet his or her tasks and needs during any given work shift. A plan for storage of equipment and access to equipment must be included.
- e) Protocols in the event an employee is exposed to a known case of the disease, exhibits symptoms of the disease, or tests positive for the disease to prevent the spread or contraction in the workplace. The protocols shall not violate any

existing federal, State, or local law regarding sick leave or health information privacy and must include detailed actions to immediately and thoroughly disinfect the work area, common area surface and shared equipment. The protocols must also describe the employer policy on available leave in the event of the need of an employee to receive testing, treatment, isolation, or quarantine.

- f) Protocols for documenting hours and work locations, including off-site visits, for essential employees. The protocol shall be designed only to aid in tracking of the disease and to identify exposed employees and contractors to facilitate the provision of any benefits which may be available.
- g) Protocols for working with the employer's locality to identify sites for emergency housing for essential employees to further contain the spread of the communicable disease to the extent applicable to the needs of the workplace.
- h) Protocols for implementing any other requirements determined by the Department of Health such as contact tracing or testing, social distancing, hand hygiene and disinfectant, or mask wearing.

The employer must consider and respond to recommendations received from the recognized or certified representatives of the employer's employees in writing, within a reasonable timeframe. A copy of the final version of the plan shall be published in a clear and conspicuous location, the employee handbook, and a location accessible on either the employer's website or on the internet accessible by employees. No employer shall take retaliatory action or otherwise discriminate against any employee for making suggestions or recommendations regarding the content of the plan. "Retaliatory action" is defined as the discharge, suspension, demotion, or discrimination against any employee, or other adverse employment action taken against an employee in the terms and conditions of employment.

Therefore, to implement the provisions of Chapter 168 of the Laws of 2020, as amended by Chapter 30 of the Laws of 2021, the Department proposes to amend section 155.17 of the Commissioner's regulations to require that district-wide school safety plans include protocols for responding to a declared State disaster emergency involving a communicable disease that are substantially consistent with the provisions of section 27-c of the Labor Law.

### **Related Regents Items**

October 2019: [Proposed Amendment to §155.17 of the Regulations of the Commissioner of Education Relating to School Safety Plans](https://www.regents.nysed.gov/common/regents/files/1019brca6.pdf)  
(<https://www.regents.nysed.gov/common/regents/files/1019brca6.pdf>)

July 2019: [Proposed Amendment to §155.17 of the Regulations of the Commissioner of Education Relating to School Safety Plans](https://www.regents.nysed.gov/common/regents/files/719p12a2.pdf)  
(<https://www.regents.nysed.gov/common/regents/files/719p12a2.pdf>)

April 2021: [Proposed Amendment to Section 155.17 of the Regulations of the Commissioner of Education Relating to District-wide School Safety Plans](https://www.regents.nysed.gov/common/regents/files/421p12a1.pdf)  
(<https://www.regents.nysed.gov/common/regents/files/421p12a1.pdf>)

### **Recommendation**

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

VOTED: That section 155.17 of the Regulations of the Commissioner of Education be amended, as submitted, effective July 12, 2021, as an emergency action upon the finding by the Board of Regents that such action is necessary for the preservation of the public health and general welfare in order to immediately implement the requirements of Chapter 168 of the Laws of 2020, as amended by Chapter 30 of the Laws of 2021, which requires school districts to include protocols for responding to a declared State disaster emergency involving a communicable disease in their district-wide school safety plans and to ensure that the emergency action taken at the April 2021 Regents meeting remains continuously in effect until the rule can be permanently adopted.

### **Timetable for Implementation**

If adopted at the June 2021 Regents meeting, the emergency rule will become effective July 12, 2021. It is anticipated that the proposed rule will be presented to the Board of Regents for permanent adoption at the September 2021 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. Because the emergency regulation will expire before the September 2021 Regents meeting, it is anticipated that an additional emergency action will be presented for adoption at the July Regents meeting. If adopted at the September 2021 meeting, the proposed amendment will become effective as a permanent rule on September 29, 2021.

**Attachment A**

AMENDMENT TO THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to sections 101, 207, 305, 2801-a of the Education Law and Chapter 168 of the Laws of 2020 and Chapter 30 of the Laws of 2021.

Subdivision (c) of section 155.17 of the Regulations of the Commissioner of Education shall be amended to read as follows:

(c) District-wide school safety plans and building-level emergency response plans. District-wide school safety plans and building-level emergency response plans shall be designed to prevent or minimize the effects of violent incidents, declared State disaster emergency involving a communicable disease or local public health emergency declaration and other 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) . . .
- (iv) . .
- (v) . . .
- (vi) . . .
- (vii) . . .
- (viii) . . .

(ix) . . .

(x) . . .

(xi) . . .

(xii) . . .

(xiii) . . .

(xiv) . . .

(xv) . . .

(xvi) . . .

(xvii) 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) ...

(b) ...

(c) ...

(d) ...

(e) ...

(f) ...

(g) ...

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

(xx) ensure the development of protocols for responding to a declared State disaster emergency involving a communicable disease that are substantially consistent with the provisions of section 27-c of the Labor Law.

STATEMENT OF FACTS AND CIRCUMSTANCES  
WHICH NECESSITATE EMERGENCY ACTION

On September 7, 2020 (Labor Day), Governor Cuomo signed into law Chapter 168 of the Laws of 2020 that requires public employers, including public school districts, to adopt a continuation of operations plan in the event that the Governor declares a public health emergency involving communicable disease. The legislation (S.8617-B / A.10832) amends subdivision 2 of section 2801-a of New York Education Law to require that district-wide school safety plans include protocols for responding to a declared public health emergency involving a communicable disease that are “substantially consistent” with the provisions of section 27-c of the Labor Law. A technical chapter amendment (S.01295 / A.009980) to the legislation became effective February 16, 2021 (Chapter 30 of the Laws of 2021). The proposed rule is necessary to conform the Commissioner’s regulations to Chapter 168 of the Laws of 2020, as amended by Chapter 30 of the Laws of 2021.

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 April 2021 meeting of the Board of Regents. Since the Board of Regents meets at fixed intervals, the earliest the proposed rule can be presented for adoption, after expiration of the required 60-day public comment period provided for in the State Administrative Procedure Act (SAPA) sections 201(1) and (5), would be the September 2021 Regents meeting. Further, pursuant to SAPA section 203(1), the earliest effective date of the proposed rule, if adopted at the September meeting, would be September 29, 2021, the date the Notice of Adoption would be published in the State Register. However, Chapter



168 of the Laws of 2020, as amended by Chapter 30 of the Laws of 2021 became effective September 7, 2020.

Therefore, a second emergency action is necessary at the June 2021 meeting for the preservation of the public health and the general welfare in order to immediately implement the requirements of Chapter 168 of the Laws of 2020, as amended by Chapter 30 of the Laws of 2021, which requires school districts to include protocols for responding to a declared State disaster emergency involving a communicable disease in their district-wide safety plans and to ensure the emergency action take at the April 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 permanent adoption at the September 2021 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. Because the emergency regulation will expire before the September 2021 Regents meeting, it is anticipated that an additional emergency action will be presented for adoption at the July Regents meeting.