



TO: P-12 Education Committee
FROM: Ken Slentz 
SUBJECT: Addition of section 136.5 and amendment of section 135.4 of the Commissioner's Regulations, relating to the Concussion Management Awareness Act
DATE: May 30, 2012

AUTHORIZATION(S):



SUMMARY

Issue for Decision

Should the Board of Regents add a new section 136.5 and amend section 135.4 of the Commissioner's Regulations, relating to the requirements of the Concussion Management Awareness Act?

Reason(s) for Consideration

Required by Chapter 496 of the Laws of 2011.

Proposed Handling

The proposed rule is being presented to the P-12 Education Committee for action at the June Regents meeting.

Procedural History

The proposed rule was discussed by the P-12 Education Committee at the April Regents meeting. A Notice of Proposed Rule Making was published in the State Register on March 14, 2012. A copy of the proposed rule and an Assessment of Public Comment are attached. Supporting materials are available upon request from the Secretary to the Board of Regents.

Background Information

The Concussion Management Awareness Act, as added by Chapter 496 of the Laws of 2011, authorizes the Commissioner of Education, in conjunction with the Commissioner of Health, to promulgate and review as necessary rules and regulations relating to pupils who suffer mild traumatic brain injuries, also referred to as concussions, while receiving instruction or engaging in any school sponsored or related activity. The statute's provisions take effect July 1, 2012.

The proposed rule requires all public school coaches, physical education teachers, school nurses and athletic trainers to complete biennially, a course approved by the Department, related to recognizing the symptoms of mild traumatic brain injuries.

The proposed rule would also require the Department along with the Department of Health, to post information on mild traumatic brain injuries and guidelines for the return to school and to certain school activities after a student has suffered such injury regardless of where the injury occurred on their respective websites. Districts would be required to provide guidance on how to obtain such information as part of their permission or consent forms that may be required for students to participate in interscholastic sports.

During school athletic activities, schools would be required to remove from activity, any student suspected of having sustained a mild traumatic brain injury. The student would not be permitted to return to athletic activity until they have been symptom free for not less than 24 hours, and have been evaluated by and received written signed authorization from a licensed physician. Students would be required to receive clearance by the district's medical director in order to participate in strenuous physical activities in extra class athletics. Such authorization is required to be kept in the student's permanent health record. Schools are also required to follow any guidance from the student's treating physician in regards to limitations on school attendance and activities.

Finally, the proposed rule permits school districts to choose to establish a concussion management team to oversee the implementation of the regulations and may establish a program which provides information on mild traumatic brain injuries to parent(s)/guardian(s).

In response to public comment, a nonsubstantial change was made in the proposed rule to replace the term "athletic trainer" with "certified athletic trainer" to clarify the rule's applicability to certified athletic trainers, consistent with the requirement that secondary schools employ only certified athletic trainers.

Recommendation

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

VOTED: that section 136.5 of the Regulations of the Commissioner of Education be added; and that subclauses (2) and (3), and subitem (A) of item (i) of subclause (4), of clause (c) of subparagraph (i) of paragraph (7) of subdivision (c) of section 135.4 and item (xi) of subclause (2) of clause (d) of subparagraph (i) of paragraph (7) of subdivision (c) of section 135.4, be amended, as submitted, effective July 3, 2012.

Timetable for Implementation

If adopted at the June Regents meeting, the proposed rule will become effective on July 3, 2012.

AMENDMENT TO THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to Education Law sections 207, 305 and 2854, and Chapter 496 of the Laws of 2011.

1. Section 136.5 of the Regulations of the Commissioner of Education is added, effective July 3, 2012, to read as follows:

§136.5 Concussion Management and Awareness.

(a) Applicability.

(1) The provisions of this section relate to pupils who have sustained, or are believed to have sustained, mild traumatic brain injuries (also referred to as a "concussion") while receiving instruction or engaging in any school sponsored or related activity.

(2) The provisions of this section:

(i) shall apply to each school district and charter school;

(ii) may be implemented by nonpublic schools if they so authorize; and

(iii) shall be deemed to be the minimum standards that must be complied with;

provided that nothing in this section shall prohibit any public school or nonpublic school from adopting and implementing more stringent standards.

(b) Course of instruction.

(1) Each school coach, physical education teacher, nurse and certified athletic trainer, who works with and/or provides instruction to pupils engaged in school sponsored athletic activities, shall complete, on a biennial basis, a course of instruction relating to recognizing the symptoms of mild traumatic brain injuries and monitoring and seeking proper medical treatment for pupils who suffer mild traumatic brain injuries.

(2) Components of such course shall include, but not be limited to:

(i) the definition of a mild traumatic brain injury;

(ii) signs and symptoms of mild traumatic brain injuries;

(iii) how mild traumatic brain injuries may occur;

(iv) practices regarding prevention; and

(v) guidelines for the return to school and school activities of a pupil who has suffered a mild traumatic brain injury, regardless of whether such injury occurred outside of school.

(3) Such course shall be completed by means of instruction approved by the Department including, but not limited, to courses provided online and by teleconference.

(c) Information.

(1) The Department shall post on its internet website information relating to mild traumatic brain injuries including, but not limited to:

(i) the definition of a mild traumatic brain injury;

(ii) signs and symptoms of mild traumatic brain injuries;

(iii) how mild traumatic brain injuries may occur; and

(iv) department guidelines for return to school and school activities of a pupil who has suffered a mild traumatic brain injury, regardless of whether such injury occurred outside of school.

(2) A school shall include the information required under paragraph (1) of this subdivision in any permission form or consent form or similar document that may be required from a parent or person in parental relation for a pupil's participation in interscholastic sports.

(3) A school shall include the information required under paragraph (1) of this subdivision, or reference how to obtain such information from the websites of the State Education Department and the Department of Health, on the school's internet website if one exists.

(d) Removal from athletic activities.

(1) A school shall require the immediate removal from athletic activities of any pupil who has sustained, or who is believed to have sustained, a mild traumatic brain injury. In the event that there is any doubt as to whether a pupil has sustained a concussion, it shall be presumed that the pupil has been so injured until proven otherwise.

(2) No such pupil shall resume athletic activity until the pupil has been symptom free for not less than twenty-four hours, and has been evaluated by and received written and signed authorization from a licensed physician; and for extra class athletic activities, has received clearance from the medical director to participate in such activity.

(i) Such authorization shall be kept on file in the pupil's permanent health record.

(ii) The school shall follow any directives issued by the pupil's treating physician with regard to limitations and restrictions on school attendance and activities for the pupil.

(e) Concussion Management Team

(1) Each school or school district, in its discretion, may establish a concussion management team.

(2) The concussion management team may be composed of:

(i) the athletic director;

(ii) a school nurse;

(iii) the school physician;

(iv) a coach of an interscholastic team;

(v) a certified athletic trainer; or

(vi) such other appropriate personnel as designated by the school or school district.

(3) The concussion management team shall oversee the implementation of subdivision (42) of Education Law section 305 and the provisions of this section as it pertains to their associated school and may establish and implement a program which provides information on mild traumatic brain injuries to parents and persons in parental relation throughout each school year.

2. Subclause (2) of clause (c) of subparagraph (i) of paragraph (7) of subdivision (c) of section 135.4 of the Regulations of the Commissioner of Education is amended, effective July 3, 2012, to read as follows:

(2) Teachers with coaching qualifications and experience certified only in areas other than physical education may coach any sport in any school, provided they have completed:

(i) the first aid requirement set forth in section 135.5 of this Part; [and]

(ii) an approved pre-service or in-service education program for coaches or will complete such a program within five years of appointment. Such program shall include an approved course in philosophy, principles and organization of athletics, which shall be completed within two years after initial appointment as a coach, and approved courses in health sciences applied to coaching, and theory and techniques of coaching that is sport specific, which shall be completed within five years after initial appointment as a coach. Such approved programs for coaches will consist of one of the following (credits and hours vary depending upon the contact and endurance involved in the sport): a department-approved college program of from two to eight credits; or a department approved in-service education program, conducted by schools, colleges, professional organizations or other recognized groups or agencies, from 30 to 120 clock hours; or an equivalent experience which is approved by the Commissioner of Education. Upon application to the Commissioner of Education in a format prescribed

by the commissioner and setting forth the reasons for which an extension is necessary, the period in which to complete such training may be extended to no more than seven years after such appointment; provided that coaches who have a lapse in service due to maternity leave, military leave, or other extenuating circumstances may apply to the commissioner for an additional extension of no more than two years to complete course work; and

(iii) on a biennial basis, a course of instruction relating to mild traumatic brain injuries pursuant to section 136.5(b) of this Title.

3. Subclause (3) of clause (c) of subparagraph (i) of paragraph (7) of subdivision (c) of section 135.4 of the Regulations of the Commissioner of Education is amended, effective July 3, 2012, to read as follows:

(3) Temporary coaching license. Except as provided in subclause (4) of this clause and notwithstanding the provisions of section 80-5.10 of this Title, other persons with coaching qualifications and experience satisfactory to the board of education may be appointed as temporary coaches of interschool sport teams whether in a paid or non-paid (volunteer) status, when certified teachers with coaching qualifications and experience are not available, upon the issuance by the commissioner of a temporary coaching license. A temporary coaching license, valid for one year, will be issued under the following conditions:

(i) . . .

(ii) . . .

(iii) candidates for the first renewal of a temporary license shall have completed or be enrolled in an approved course in philosophy, principles and organization of athletics; [and]

(iv) candidates for any subsequent renewal of a temporary license shall have completed an approved pre-service or in-service education program for coaches which shall include an approved course in philosophy, principles and organization of athletics, which shall be completed within two years after initial appointment as a coach, and approved courses in health sciences applied to coaching, and theory and techniques of coaching that is sport specific, which shall be completed within five years after initial appointment as a coach. Such approved programs for coaches shall consist of one of the following (credits and hours vary depending upon the contact and endurance involved in the sport): a department-approved college program of from two to eight credits; or a department approved in-service education program, conducted by schools, colleges, professional organizations or other recognized groups or agencies, from 30 to 120 clock hours; or an equivalent experience which is approved by the Commissioner of Education. Upon application in a format prescribed by the Commissioner of Education and setting forth the reasons for which an extension is necessary, the period in which to complete such training may be extended to no more than seven years after such appointment; provided that coaches who have a lapse in service due to maternity leave, military leave, or other extenuating circumstances may apply to the commissioner for an additional extension of no more than two years to complete course work; and

(v) on a biennial basis, candidates shall have completed a course of instruction relating to mild traumatic brain injuries pursuant to section 136.5(b) of this Title.

4. Sub-item (A) of item (i) of subclause (4) of clause (c) of subparagraph (i) of paragraph (7) of subdivision (c) of section 135.4 of the Regulations of the Commissioner of Education is amended, effective July 3, 2012, to read as follows:

(A) the candidate has completed the requirements set forth in items (3)(ii),(iii) [and], (iv) and (v) of this clause; and

5. Item (xi) of subclause (2) of clause (d) of subparagraph (i) of paragraph (7) of subdivision (c) of section 135.4 of the Regulations of the Commissioner of Education is amended, effective July 3, 2012, to read as follows:

(xi) professional development and responsibilities, including:

(A) . . .

(B) . . .

(C) educating the community of health care professionals as to the role of the certified athletic trainer; [and]

(D) informing parents, coaches and athletes as to the importance of quality health care for the physically active; and

(E) on a biennial basis, completing a course of instruction relating to mild traumatic brain injuries pursuant to section 136.5(b) of this Title.

PROPOSED AMENDMENT TO THE REGULATIONS OF THE COMMISSIONER OF EDUCATION PURSUANT TO EDUCATION LAW SECTIONS 207, 305 AND 2854 AND CHAPTER 496 OF THE LAWS OF 2011, RELATING TO THE CONCUSSION MANAGEMENT AWARENESS ACT.

ASSESSMENT OF PUBLIC COMMENT

Since publication of a Notice of Proposed Rule Making in the State Register on March 14, 2012, the State Education Department received the following substantive comments.

1. COMMENT:

Revise §136.5(d)(1) to require immediate removal from athletic or other physical activities of pupil who has sustained, or believed to sustain, a mild traumatic brain injury (MTBI).

DEPARTMENT RESPONSE:

Consistent with statute, the rule requires removal from "athletic activities." However, guidance specifies such activities to include recess activities and physical education classes, in addition to sports.

2. COMMENT:

Revise §136.5(d)(2) to read: "No such pupil shall resume athletic activity until the pupil has been symptom free for not less than twenty-four hours, and has been evaluated by and received written and signed authorization from a licensed physician, and requires a graduated return to participation consistent with recommendations from the most current International Consensus Statement on Concussion . . ."

DEPARTMENT RESPONSE:

Revision is unnecessary. The rule's purpose is to insure a potential concussion is evaluated to determine whether the student has sustained a concussion.

A graduated return to participation is only recommended if the student is diagnosed with a concussion.

3. COMMENT:

Revise section 136.5(d)(2)(ii) to read: "The school shall follow any directives issued by the pupil's treating physician and/or school physician with regard to limitations and restrictions on school attendance and activities for the pupil, whichever is more restrictive. Private and school physicians are considered to be sharing the care of the students and are permitted and encouraged to dialogue about the affected pupil, including, but not limited to sharing the results of neurocognitive testing."

DEPARTMENT RESPONSE:

Revision is unnecessary. Pursuant to §135.4(c)(7)(i)(i), the approval of school medical officer (i.e. the "school physician") is still required for a pupil's return to activity, and it is therefore inappropriate to revise the regulation as suggested. However, collaboration between the treating physician and school physician is encouraged and is more appropriately addressed in guidance.

4. COMMENT:

Section 136.(c)(2) requires a consent form include information relating to MTBIs, including but not limited to: (i) MTBI definition; (ii) MBTI signs and symptoms; (iii) how MTBI may occur; and (iv) department guidelines for return to school and school activities of a pupil with MTBI, regardless whether injury occurred outside of school.

It is impractical to add this information to the consent form. Instead, revise section 136.5(c)(2) to read: "Schools must provide training relating to mild traumatic brain injury including the definition of mild traumatic brain injury, signs and symptoms of mild traumatic brain injuries, how such injuries may occur, and guidelines for return to school and school activities of a pupil who has suffered such injury to parents and

athletes before the season starts in written, verbal, or computer based instruction and receive back written attestation for this instruction from parents and athletes. Parents and pupils must acknowledge they understand that in signing the consent, they are agreeing to abide by the District's policies and protocols regarding head injury/concussion."

DEPARTMENT RESPONSE:

The statute requires the specified information be included in the consent form.

5. COMMENT:

Concern expressed there is no similar requirement for students who participate in "recreational" and "travel" league community sports and that these students do not even get medical clearance to participate.

DEPARTMENT RESPONSE:

The rule conforms to statute. Neither school districts nor Department has jurisdiction over travel/recreational activities.

6. COMMENT:

The rule contains an unfunded mandate. Expenses will be associated with biennial course requirements both in staff time and course delivery. Small/medium-sized rural school districts may not have resources to establish a concussion management team (CMT). Can State/local health departments provide professional development and use their resources to pay for/offset training costs?

DEPARTMENT RESPONSE:

The rule is necessary to implement Chapter 496 of the Laws of 2012, and has been carefully drafted to not impose additional requirements beyond those imposed by the statute.

7. COMMENT

Is each school required to have a CMT?

DEPARTMENT RESPONSE:

The rule conforms to statute, which allows schools to choose whether or not to establish a CMT.

8. COMMENT:

Physicians with limited MBTI experience, may not understand the nature of a MTBI, and provide clearance for an athlete too quickly. There may be pressure on a family physician or "doctor shopping" for the overly-ambitious parent/athlete that could lead to a decision that does not conform to the opinion of the CMT.

DEPARTMENT RESPONSE:

Pursuant to section 135.4(c)(7)(i)(i), school boards still have responsibility not to permit a pupil's participation in strenuous activity without the approval of the school medical officer. The Department encourages physicians to educate themselves on concussion management to avoid premature clearance of an athlete.

9. COMMENT:

Consider adding: "Certified Athletic Trainers, under the supervision of a NYS Licensed physician, can assist the school medical director and director of athletics by identifying a student with a potential concussion, removing him/her from play for suspected concussion, assisting with serial testing and evaluation as a concussed student returns to athletic activities, and playing an integral role in insuring the student athlete receives appropriate post-concussion care under their supervising physician and in conjunction with the student's medical provider's guidance."

DEPARTMENT RESPONSE:

It is unnecessary to place this provision in the rule, since Education Law section 902 currently permits duly licensed or otherwise authorized health professionals to assist the medical director in performing their duties.

10. COMMENT:

Revise rule to also allow licensed psychologists to decide whether a pupil with a MTBI can return to athletic activity, and to allow inclusion of psychologists in CMTs.

DEPARTMENT RESPONSE:

Nothing in the rule limits districts regarding who may serve on a CMT.

11. COMMENT:

What are the parameters for number of hours instruction, curriculum, etc. for the biennial course requirements?

DEPARTMENT RESPONSE:

The rule states the Department will approve a course to meet the requirements of the statute. Courses will be posted on the Department's web site once approved.

12. COMMENT:

Will rule require all district nurses, K-12, to be trained and certified in the identification, protocols and procedures for concussions, since students may obtain concussions not only during athletic participation but while participating in physical education classes as well as during recess?

DEPARTMENT RESPONSE:

Education Law § 305(42)(a)(i) and §136.5(b)(1) of the Regulations require school nurses to complete the required training course.

13. COMMENT:

Should the CMT include Administrators (Principals), nurses, and physical education teachers K-12?

DEPARTMENT RESPONSE:

The rule conforms to statute which does not mandate what members are to be present on a CMT. Since schools have different types of staff (which makes statewide regulation of the team's composition difficult), the Department permits flexibility in how schools organize their teams, based on their current staffing and needs.

14. COMMENT:

Will there be a specific certification process required for concussions, renewable every two years, for coaches, teachers, nurses, etc., similarly to coaches who currently must obtain CPR/First Aid certifications(Commissioner's Reg. 135.4), to be approved to coach?

DEPARTMENT RESPONSE:

The rule requires that coaches, school nurses, physical education teachers, and certified athletic trainers complete a Department-approved course every two years, but course completion does not result in certification.

15. COMMENT:

There is nothing in the rule that requires a child to see a physician specifically trained in concussion management. However, this was stated in the original Bill (S395). It makes a significant difference when a physician trained in concussion assessment treats a child for a MTBI. Often, pediatricians and primary care physicians don't have specific training to manage concussions as well as a neurologist or neuropsychologist.

DEPARTMENT RESPONSE:

The rule conforms to the enacted statute (L. 2011, Ch.496), which does not impose such requirement.

16. COMMENT:

What is extra class athletic activities v. athletic activity?

DEPARTMENT RESPONSE:

§135.1(h) of the Commissioner's regulations defines extra-class activities in the physical education program to be those sessions organized for instruction and practice in skills, attitudes and knowledge through participation in individual, group and team activities organized on an intramural, extramural or interschool athletic basis to supplement regular physical education class instruction.

17. COMMENT:

Can any physician clear an athlete back to play or does it have to be the school's medical officer?

DEPARTMENT RESPONSE:

The rule does not change responsibility of school boards under §135.4(c)(7)(i)(i) "to provide adequate health examination before participation in strenuous activity and periodically throughout the season as necessary, and to permit no pupil to participate in such activity without the approval of the school medical officer."

18. COMMENT:

The rule provides only a physician evaluates whether an MTBI has occurred and clear. Can an appropriate health care provider (nurse practitioner, physician assistant) also evaluate?

DEPARTMENT RESPONSE:

The rule conforms to statute which requires that a student removed from athletic activities may not resume such activities until evaluated by and receives written and signed authorization from a licensed physician. The scope of practice of nurse practitioners or physicians is not changed by the rule.

19. COMMENT:

Recommend rule require school districts to utilize sports-related neuropsychological assessments to determine pre-injury baseline neurocognitive functioning, and that serial retesting be required following a brain injury/suspected brain injury for all students engaged in school based athletic programs.

DEPARTMENT RESPONSE:

The rule conforms to the statute, which does not impose such requirements.

20. COMMENT:

Revise §§136.5 (b) (1) and 136.5 (e) (2) (v) to read "certified athletic trainer" to be consistent with the requirement for secondary schools to employ only certified athletic trainers per §135.4(c)(7)(i) (d)(2)(xi)(C).

DEPARTMENT RESPONSE:

The rule has been revised as recommended to clarify its applicability to only certified athletic trainers.

21. COMMENT:

Clarify §136.5(b) on whether "means of instruction" refers to course content or how course is taught.

DEPARTMENT RESPONSE:

"Means of instruction" refers to how the course instruction is delivered. The content requirements of the course are defined in statute.

22. COMMENT:

In §136.5(d)(v)(2) what is the definition of "extra-class athletic activities"? Is the medical director the final authority to clear a student to participate in extra-class activity only?

DEPARTMENT RESPONSE:

Section 135.1(h) defines extra-class activities in the physical education program to be those sessions organized for instruction and practice in skills, attitudes and knowledge through participation in individual, group and team activities organized on an intramural, extramural or interschool athletic basis to supplement regular physical education class instruction. According to 135.4(c)(7)(i)(i), the medical director's approval is required in order for a student to participate in strenuous physical activities.

23. COMMENT:

Does §136.5 d (2) ii mean the school follows direction of a treating physician only, or does the district medical director have final authority on limitations and restrictions?

DEPARTMENT RESPONSE:

§135.4(c)(7)(i)(i) requires approval of the medical director for any student to participate in strenuous physical activity. The law is silent on authority of the medical director in other aspects of the educational program.

24. COMMENT:

Because of lack of public understanding about brain injury, recommend that the rule use the term "brain injury" rather than "mild brain injury" because of concern that use of "mild" may cause unknowledgeable people to underestimate potential seriousness of concussion.

DEPARTMENT RESPONSE:

The rule conforms to statute. Guidance will clarify terms that may be confusing/ misleading.

25. COMMENT:

Revise §136.5(d)(2)(ii), providing that school shall follow any directives issued by the pupil's treating physician with regard to limitations and restrictions on school

attendance and activities, to clarify provision includes both physical and academic/cognitive activities for the pupil.

DEPARTMENT RESPONSE:

"School activities" includes any and all aspects of the school program.

26. COMMENT:

Rule should provide examples of existing training programs and other areas that might be included in training.

DEPARTMENT RESPONSE:

The rule conforms to statute. Training programs are frequently changed/updated as new research becomes available. Including examples in rule would make it difficult to update, and is more appropriately addressed in guidance.

27. COMMENT:

It is essential those in prominent school positions concerning student athletes, and parents, have access to information relating directly to cognition, and that all involved, particularly parents, have information about other useful resources.

DEPARTMENT RESPONSE:

This information is more appropriately included in guidance, which will ensure the content remains current.