

**CONNECTICUT STATE BOARD OF EDUCATION
Hartford**

Statement of Principal Reasons in Support of and in Opposition to the Action of the State Board of Education in Promulgating Regulations Concerning Emergency Administration of Epinephrine

Introduction

Pursuant to section 4-168(e) of the Connecticut General Statutes after the close of the public comment period, and prior to the submission of proposed regulations to the Attorney General, an agency must post on the eRegulations System:

(1) The final wording of the proposed regulation; (2) a statement of the principal reasons in support of its intended action; and (3) a statement of the principal considerations in opposition to its intended action as urged in written or oral comments on the proposed regulation and its reasons for rejecting such considerations.

The Connecticut State Board of Education (the “Board”) is here fulfilling these requirements with respect to its intended amendment to its regulations on Administration of Medication by School Personnel and Administration of Medication During Before- and After-School Programs and School Readiness Programs.

1. Final Wording of the Proposed Regulation

The final wording of the proposed regulation is being posted with this statement.

2. Statement of the Principal Reasons in Support of its Intended Action

Public Act No. 14-176 amended Connecticut General Statutes Section 10-212a to require schools to administer epinephrine through a cartridge injector as emergency first aid to students who experience a life-threatening allergic reaction. Emergency administration of epinephrine is required even when there is no parental authorization or a written order of a qualified medical professional, unless a parent or guardian has notified the school district that emergency epinephrine not be administered.

Public Act No. 14-176 required the Board to promulgate these regulations (in consultation with the Department of Public Health). The Board declared its intent to amend its regulations at its October 1, 2014 meeting. The Connecticut State Department of Education (CSDE) then posted a notice of the Board’s intent on the Secretary of State’s e-Regulation system. This notice included a statement of purpose, a copy of the proposed regulation, notice of a public hearing, and notice that the public could submit written data, facts, views, or arguments. The proposed regulation was also submitted to the Office of Policy and Management (OPM) and legal counsel for the Governor.

While the Board initially had planned to promulgate a new section of its regulations to address the requirements of P.A. 14-176, OPM and Governor’s legal counsel suggested that the regulations implementing Public Act 14-176 be integrated with the Board’s existing regulations rather than be presented as a separate section. The CSDE implemented this suggestion, and has included the provisions related to the implementation of Public Act 14-176 in the existing

regulations. Consequently, amendments have been made to the following sections of the regulations: 10-212a-1(15)(B), (35), (36), and (37); 10-212a-2(a)(3), (4), (5), (b), (d)(2), (4), (5), and (e); 10-212a-3(a), (b), and (c); 10-212a-5(a), (b), and (c); 10-212-6(d) and (e); 10-212a-9; and 10-212a-10(c).

Existing law requires local and regional boards of education to develop policies and procedures for the administration of medication in schools. Consequently, the proposed regulations follow this approach by prescribing policies and procedures to be developed by local school districts to implement the requirements of Public Act 14-176. These provisions are contained primarily in Section 10-212a-2 of the regulations.

3. Statement of the Principal Considerations in Opposition to its Intended Action as Urged in Written or Oral Comments and the Board's Reasons for Rejecting (or Accepting) Such Considerations

No individuals or organizations presented testimony at the public hearing. However, a number of individuals and organizations submitted written comments, including: a local health department nursing supervisor, school nurses, a school nurse who is a member of a local board of education; a pharmaceutical company whose products include those for the treatment of respiratory diseases and life-threatening allergic reactions (including epipens); and the school law practice group of a Connecticut law firm. The CSDE's response to the public comments is summarized below. All comments were appreciated.

Some comments advanced positions which had been resolved by the General Assembly in the legislation itself. Consequently, the Board could not implement such comments. For example, more than one comment questioned the wisdom of having non-medical persons such as teachers perform emergency assessments and administer emergency epinephrine. The legislation, however, provides for non-medical personnel, including principals, teachers, and others, who have been trained to administer epinephrine as emergency first aid, to administer the epinephrine only when the school nurse is absent or unavailable. One commentator argued that parental consent should be obtained prior to the administration of epinephrine. However, the legislation explicitly provides for the administration of epinephrine on an emergency basis without seeking parental permission. Other commentators questioned the wisdom and legality of having a parent submit a notice to withhold the emergency administration of medication and also questioned whether a workable system for implementing parental rejection of the administration of the emergency epinephrine is even feasible. These comments sought action contrary to the statute and could not be implemented.

Another comment took the position that the authority to administer epinephrine on an emergency basis not be limited to the school's physical grounds. However, Public Act 14-176 calls for a qualified school employee to be "on the grounds of the school during regular school hours" to administer epinephrine. There is no legal basis in the statute to expand the physical area where a qualified school employee or school nurse must be available to administer emergency epinephrine. Another commentator treated the regulation as a legislative proposal and asked that the CSDE not proceed with the implementation of the statute proposal for various reasons. Commentators also expressed concern with the possibility of liability. These comments could not be accepted, because of the requirements of the statute itself. While possible legal liability is always deserving of attention, the statute must be implemented.

Again, the Board respects these comments and appreciates the time and effort involved in providing these comments. However, where particular actions have been mandated by the statute, these regulations, and policies and procedures of boards of education, must implement the legislative requirements.

Other comments addressed some of the particular requirements set forth in the proposed regulation. The October 2014 draft of the proposed regulation required local boards of education to include in their policies and procedures provisions specifying the conditions under which a qualified school employee may administer epinephrine and for the designation of a person responsible for decision making in the absence of the school nurse. The usefulness of these provisions was questioned in comments. These proposed requirements were deleted as unnecessary. The conditions under which epinephrine will be administered will be addressed in the annual training to be provided to the qualified school employees, and requiring that these conditions to also be set out in local policies and procedures did not serve a useful purpose. Also, the person responsible for decision making in the absence of the nurse will necessarily be the qualified school employee administering the epinephrine, and requiring designation of another decision-maker is unnecessary and may result in confusion. These considerations justified removal of these provisions.

The provision in the October 2014 draft which provided that supervision of the emergency administration of epinephrine should be the responsibility of the local board of education was questioned in a number of comments. This provision also has been deleted. The existing regulations call for the general supervision of the administration of medication to be accomplished by the school nurse, and there is no reason to have a different rule for the emergency administration of epinephrine.

More than one comment addressed defining “regular school hours.” This phrase is used in the statute to describe the time period when a nurse or qualified school employee must be available to administer epinephrine. One commentator said that regular school hours should be defined to mean the hours during which curricular instruction is regularly provided and should not include time periods when only extra-curricular activities occur. In response, the CSDE has added a requirement that boards of education determine the regular school hours for each school, but did not include the standard suggested by the commentator leaving the standard to the local or regional board in light of its particular needs.

The CSDE has also added a provision requiring local boards of education to include in their policies and procedures a mechanism to ensure that persons who will administer epinephrine are notified of the students whose parents have refused the emergency administration of epinephrine.

One commentator expressed concern that the proposed regulation provides that employees who will administer the emergency epinephrine must be volunteers. We believe that the legislative history of Public Act 14-176 contemplated that such employees be volunteers and that requiring an unwilling person to assume this responsibility would not be workable.

A commentator also questioned the language which required the school nurse and parents to be immediately notified of the emergency administration of epinephrine. The CSDE believes that the emergency administration of epinephrine requires an immediate attempt to notify the school nurse and a parent. If the school nurse or parent is not available when notice is attempted, but continuing attempts to reach the nurse or parent are made, this requirement would be met.

Another comment made was that the policies and procedures should address follow-up treatment and the initiation of emergency medical services. The CSDE agrees that this is important, and the need to contact emergency medical services will be emphasized in the training required by the statute.

In response to comments, the requirement that policies and procedures be reviewed annually was eliminated; existing regulations call for biennial review which is sufficient.

In summary, it is believed that these regulations fulfill the requirements of Public Act 14-176 and will guide the development and adoption of sound emergency epinephrine medication administration policies and procedures by local and regional boards of education