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March 5, 2019

To: District Superintendents of BOCES
Superintendents of Public School Districts
Administrators of Public, Charter, and Nonpublic Schools

From: Kathleen R. DeCataldo 

Subject: Educational Materials and Resources Addressing Substance Use:
Implementation of Education Law § 3038

The New York State Education Department (NYSED) would like to inform you of a new law, Chapter 323 of the Laws of 2018 which amends both Education and Mental Hygiene Law and is effective March 5, 2019. New Education Law §3038 (Attachment A) requires the superintendent of each school district, in consultation with the local Board of Cooperative Educational Services (BOCES) District Superintendent (DS) where applicable, to designate an employee of the school district or BOCES to provide materials and/or resources upon request to any student, parent or staff regarding where and how to find available substance use related services. Where possible, the designated employee should be a school social worker, school counselor, or any other health practitioner (i.e., school psychologist, school nurse). The request for and the provision of substance use information to a student, parent or staff shall be confidential, may not be used in school disciplinary proceedings, and as related to other applicable privilege, remain confidential pursuant to section § 4508 of the Civil Practice Law and Rules. However, there is nothing in the new law which relieves a designated employee of their legal duty to otherwise report information.

To assist schools in meeting this requirement, Chapter 323 also amended Mental Hygiene Law §19.07 (Attachment B) to require the New York State Office of Alcoholism and Substance Abuse Services (OASAS), as the subject matter experts, to consult with the NYSED to provide substance use educational materials. Materials will be age-appropriate and include information or resources for parents to identify the warning signs and address the risks of substance use with their children. Topics will include misuse and abuse of alcohol, tobacco, prescription medication and other drugs with a focus on substances most prevalent among school aged youth.

A joint Commissioners' letter will be released in the near future announcing these robust evidence-based resources developed to assist schools in meeting this requirement. These resources will include, but are not limited to:

- Guidance document, "Educational Resources to Address Substance Use";

- Informative poster template for schools to customize and post;
- Accompanying professional learning webinar; and
- Supplemental guidance supporting K-12 substance use education, “*Creating an Evidence-Based Instructional Framework for Substance Use Prevention and Education*”.

School districts should access the resources on the OASAS Website <https://combataddiction.ny.gov/schools> related to awareness, warning signs, and having conversations about substance use with youth. Materials regarding prevention, treatment, and recovery are also available. These evidence-based materials are available for multiple stakeholder groups, including parents/families/communities, school staff, and students. Examples of the available resources include [downloadable pamphlets](#) for a variety of stakeholder groups on various topics in both English and Spanish. It is anticipated that this web-based repository of resources will continue to be augmented over time to continue reflecting enhanced support for people navigating the constantly changing landscape related to substance use.

As these new requirements also provide additional opportunities for community partnerships, the expansive [OASAS Prevention Provider Network](#), and regional [Prevention Resource Centers \(PRC\)](#), [Treatment Provider Directory](#), and [Addiction Treatment Center \(ATC\) Directory](#) can be especially helpful in assisting with related resources. In addition, [Community Coalitions](#) offer support for locally-identified priorities and environmental strategies. The [Regional Addiction Resource Centers \(RARC\)](#) are available to assist people, families and communities in accessing local resources for those facing addiction problems. The RARC help identify local prevention resources, local treatment opportunities, recovery services and other supports. The RARCs can also organize events based on community requests. There are also [Regional Substance Use Disorder Service Options](#).

Please note: School districts are recommended to have Board of Education approved substance use policies in place addressing student and staff substance use and to refer to their approved policy when a substance use/abuse situation occurs in a school.

NYSED questions related to these new requirements should be directed to the Office of Student Support Services at (518) 486-6090 or StudentSupportServices@nysed.gov; or the Office of Curriculum and Instruction at (518) 474-5922 or emscurric@nysed.gov.

OASAS questions related to this new law should be directed to the Office of Bureau of Prevention Services at (518) 457-4384 or Prevention@oasas.ny.gov; or the Treatment Unit at (518) 457-1349 or Treatment@oasas.ny.gov.

McKinney's Consolidated Laws of New York Annotated
Education Law ([Refs & Annos](#))
Chapter 16. Of the Consolidated Laws ([Refs & Annos](#))
Title IV. Teachers and Pupils
Article 61. Teachers and Supervisory and Administrative Staff ([Refs & Annos](#))

McKinney's Education Law § 3038

§ 3038. [Designation of employee to provide information of substance use related services.]¹

Effective: March 5, 2019

[Currentness](#)

<[Eff. March 5, 2019.]>

The superintendent of each school district, in consultation with the district superintendent of a board of cooperative educational services, where applicable, shall designate an employee who is a member of the school district staff or an employee of the board of cooperative educational services staff to provide information to any student, parent, or staff regarding where and how to find available substance use related services. Where possible, such designated individual shall be a school social worker, school guidance counselor, or any other health practitioner or counselor employed by the school. Any information provided by a student, parent or teacher to such designated individual shall be confidential, shall not be used in any school disciplinary proceeding and shall, in addition to any other applicable privilege, be considered confidential in the same manner as information provided pursuant to [section forty-five hundred eight of the civil practice law and rules](#). Provided, however, that nothing in this section shall relieve such designated individual of any legal duty to otherwise report such information. Such designated individual or individuals shall undergo any necessary training as may be required by the commissioner.

Credits

(Added [L.2018, c. 323, § 2, eff. March 5, 2019.](#))

Footnotes

¹ Section enacted without section heading, which has been supplied by editor.

McKinney's Education Law § 3038, NY EDUC § 3038

Current through L.2019, chapters 1 to 19.

McKinney's Consolidated Laws of New York Annotated
Mental Hygiene Law (Refs & Annos)
Chapter 27. Of the Consolidated Laws (Refs & Annos)
Title D. Alcoholism and Substance Abuse Act
Article 19. Office of Alcoholism and Substance Abuse (Refs & Annos)

McKinney's Mental Hygiene Law § 19.07

§ 19.07 Office of alcoholism and substance abuse services; scope of responsibilities

Effective: August 1, 2014

[Currentness](#)

(a) The office of alcoholism and substance abuse services is charged with the responsibility for assuring the development of comprehensive plans, programs, and services in the areas of research, prevention, care, treatment, rehabilitation, including relapse prevention and recovery maintenance, education, and training of persons who abuse or are dependent on alcohol and/or substances and their families. Such plans, programs, and services shall be developed with the cooperation of the office, the other offices of the department where appropriate, local governments, consumers and community organizations and entities. The office shall provide appropriate facilities and shall encourage the provision of facilities by local government and community organizations and entities. The office is also responsible for developing plans, programs and services related to compulsive gambling education, prevention and treatment consistent with [section 41.57](#) of this chapter.

(b) The office of alcoholism and substance abuse services shall advise and assist the governor in improving services and developing policies designed to meet the needs of persons who abuse or are dependent on alcohol and/or substances and their families, and to encourage their rehabilitation, maintenance of recovery, and functioning in society.

(c) The office of alcoholism and substance abuse services shall have the responsibility for seeing that persons who abuse or are dependent on alcohol and/or substances and their families are provided with care and treatment, that such care, treatment and rehabilitation is of high quality and effectiveness, and that the personal and civil rights of persons receiving care, treatment and rehabilitation are adequately protected.

(d) The office of alcoholism and substance abuse services shall foster programs for the training and development of persons capable of providing the foregoing services, including but not limited to a process of issuing, either directly or through contract, credentials for alcoholism and substance abuse counselors or gambling addiction counselors in accordance with the following:

(1) The office shall establish minimum qualifications for counselors in all phases of delivery of services to persons and their families who are suffering from alcohol and/or substance abuse and/or chemical dependence and/or compulsive gambling that shall include, but not be limited to, completion of approved courses of study or equivalent on-the-job experience in alcoholism and substance abuse counseling and/or counseling of compulsive gambling.

(i) The office shall establish procedures for issuing, directly or through contract, credentials to counselors who meet minimum qualifications, including the establishment of appropriate fees, and shall further establish procedures to

suspend, revoke, or annul such credentials for good cause. Such procedures shall be promulgated by the commissioner by rule or regulation.

(ii) The commissioner shall establish a credentialing board which shall provide advice concerning the credentialing process.

(2) The establishment, with the advice of the advisory council on alcoholism and substance abuse services, of minimum qualifications for counselors in all phases of delivery of services to those suffering from alcoholism, substance and/or chemical abuse and/or dependence and/or compulsive gambling and their families that shall include, but not be limited to, completion of approved courses of study or equivalent on-the-job experience in counseling for alcoholism, substance and/or chemical abuse and/or dependence and/or compulsive gambling, and issue credentials to counselors who meet minimum qualifications and suspend, revoke, or annul such credentials for good cause in accordance with procedures promulgated by the commissioner by rule or regulation.

(3) For the purpose of this title, the term “credentialed alcoholism and substance abuse counselor” or “C.A.S.A.C.” means an official designation identifying an individual as one who holds a currently registered and valid credential issued by the office of alcoholism and substance abuse services pursuant to this section which documents an individual's qualifications to provide alcoholism and substance abuse counseling. The term “gambling addiction counselor” means an official designation identifying an individual as one who holds a currently registered and valid credential issued by the office of alcoholism and substance abuse services pursuant to this section which documents an individual's qualifications to provide compulsive gambling counseling.

(i) No person shall use the title credentialed alcoholism and substance abuse counselor or “C.A.S.A.C.” or gambling addiction counselor unless authorized pursuant to this title.

(ii) Failure to comply with the requirements of this section shall constitute a violation as defined in the penal law.

(4) All persons holding previously issued and valid alcoholism or substance abuse counselor credentials on the effective date of amendments to this section shall be deemed C.A.S.A.C. designated.

(e) Consistent with the requirements of [subdivision \(b\) of section 5.05](#) of this chapter, the office shall carry out the provisions of article thirty-two of this chapter as such article pertains to regulation and quality control of chemical dependence services, including but not limited to the establishment of standards for determining the necessity and appropriateness of care and services provided by chemical dependence providers of services. In implementing this subdivision, the commissioner, in consultation with the commissioner of health, shall adopt standards including necessary rules and regulations including but not limited to those for determining the necessity or appropriate level of admission, controlling the length of stay and the provision of services, and establishing the methods and procedures for making such determination.

(f) The office of alcoholism and substance abuse services shall develop a list of all agencies throughout the state which are currently certified by the office and are capable of and available to provide evaluations in accordance with [section sixty-five-b of the alcoholic beverage control law](#) so as to determine need for treatment pursuant to such section and to assure the availability of such evaluation services by a certified agency within a reasonable distance of every court of a

local jurisdiction in the state. Such list shall be updated on a regular basis and shall be made available to every supreme court law library in this state, or, if no supreme court law library is available in a certain county, to the county court library of such county.

(g) The office of alcoholism and substance abuse services shall develop and maintain a list of the names and locations of all licensed agencies and alcohol and substance abuse professionals, as defined in [paragraphs \(a\) and \(b\) of subdivision one of section eleven hundred ninety-eight-a of the vehicle and traffic law](#), throughout the state which are capable of and available to provide an assessment of, and treatment for, alcohol and substance abuse and dependency. Such list shall be provided to the chief administrator of the office of court administration and the commissioner of motor vehicles. Persons who may be aggrieved by an agency decision regarding inclusion on the list may request an administrative appeal in accordance with rules and regulations of the office.

(h) The office of alcoholism and substance abuse services shall monitor programs providing care and treatment to inmates in correctional facilities operated by the department of corrections and community supervision who have a history of alcohol or substance abuse or dependence. The office shall also develop guidelines for the operation of alcohol and substance abuse treatment programs in such correctional facilities in order to ensure that such programs sufficiently meet the needs of inmates with a history of alcohol or substance abuse or dependence and promote the successful transition to treatment in the community upon release. No later than the first day of December of each year, the office shall submit a report regarding the adequacy and effectiveness of alcohol and substance abuse treatment programs operated by the department of corrections and community supervision to the governor, the temporary president of the senate, the speaker of the assembly, the chairman of the senate committee on crime victims, crime and correction, and the chairman of the assembly committee on correction.

(i) The office of alcoholism and substance abuse services shall periodically, in consultation with the state director of veterans' affairs: (1) review the programs operated by the office to ensure that the needs of the state's veterans who served in the U.S. armed forces and who are recovering from alcohol and/or substance abuse are being met and to develop improvements to programs to meet such needs; and (2) in collaboration with the state director of veterans' affairs and the commissioner of the office of mental health, review and make recommendations to improve programs that provide treatment, rehabilitation, relapse prevention, and recovery services to veterans who have served in a combat theatre or combat zone of operations and have a co-occurring mental health and alcoholism or substance abuse disorder.

(j) The office, in consultation with the state education department, shall identify or develop materials on problem gambling among school-age youth which may be used by school districts and boards of cooperative educational services, at their option, to educate students on the dangers and consequences of problem gambling as they deem appropriate. Such materials shall be available on the internet website of the state education department. The internet website of the office shall provide a hyperlink to the internet page of the state education department that displays such materials.

(k) Heroin and opioid addiction awareness and education program. The commissioner, in cooperation with the commissioner of the department of health, shall develop and conduct a public awareness and educational campaign on heroin and opioid addiction. The campaign shall utilize public forums, social media and mass media, including, but not limited to, internet, radio, and print advertising such as billboards and posters and shall also include posting of materials and information on the office website. The campaign shall be tailored to educate youth, parents, healthcare professionals and the general public regarding: (1) the risks associated with the abuse and misuse of heroin and opioids; (2) how to recognize the signs of addiction; and (3) the resources available for those needing assistance with heroin or opioid addiction. The campaign shall further be designed to enhance awareness of the opioid overdose prevention program authorized pursuant to [section thirty-three hundred nine of the public health law](#) and the “Good Samaritan

law” established pursuant to [sections 220.03](#) and [220.78 of the penal law](#) and [section 390.40 of the criminal procedure law](#), and to reduce the stigma associated with addiction.

(l) [Eff. March 5, 2019] The office of alcoholism and substance abuse services, in consultation with the state education department, shall develop or utilize existing educational materials to be provided to school districts and boards of cooperative educational services for use in addition to or in conjunction with any drug and alcohol related curriculum regarding the misuse and abuse of alcohol, tobacco, prescription medication and other drugs with an increased focus on substances that are most prevalent among school aged youth as such term is defined in [section eight hundred four of the education law](#). Such materials shall be age appropriate for school age children, and to the extent practicable, shall include information or resources for parents to identify the warning signs and address the risks of substance abuse.

Credits

(Added L.1992, c. 223, § 14. Amended L.1996, c. 208, § 3; L.1996, c. 384, § 2; L.1998, c. 383, § 7, eff. April 1, 1999; L.1999, c. 558, § 5, eff. Oct. 5, 1999; L.2005, c. 58, pt. I, §§ 4, 5, eff. April 12, 2005; L.2006, c. 732, § 20, eff. Nov. 1, 2006; L.2007, c. 669, § 5, eff. Oct. 27, 2007; L.2009, c. 56, pt. AAA, § 16, eff. Aug. 5, 2009; L.2010, c. 271, § 1, eff. Jan. 26, 2011; L.2011, c. 62, pt. C, subpt. B, § 118-f, eff. March 31, 2011; L.2013, c. 358, § 1, eff. March 26, 2014; L.2013, c. 551, § 1, eff. Aug. 1, 2014; L.2014, c. 40, § 1, eff. June 23, 2014; L.2014, c. 146, § 1, eff. Aug. 1, 2014; L.2018, c. 323, § 1, eff. March 5, 2019.)

Notes of Decisions (5)

McKinney's Mental Hygiene Law § 19.07, NY MENT HYG § 19.07
Current through L.2019, chapters 1 to 19.

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