
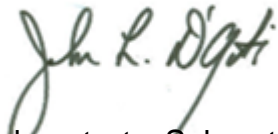




THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK / ALBANY, NY 12234

**TO:** P-12 Education Committee  
Higher Education Committee

**FROM:** Ken Wagner   
John D'Agati 

**SUBJECT:** Proposed Amendments to Subpart 30-2 of the Rules of the Board of Regents Relating to a Prohibition Against Traditional Standardized Testing for Students in Grades K-2, Removal of K-2 Tests From the List of Approved Student Assessments, Change in the Definition of Core Subjects for the State Growth or Other Comparable Measures Subcomponent and a Limitation on Instructional Time Spent on Taking Local Assessments for Purposes of Annual Professional Performance Reviews (APPR)

**DATE:** February 10, 2014

**AUTHORIZATION(S):**

## SUMMARY

### Issue for Decision

Should the Board of Regents amend Subpart 30-2 of the Rules of the Board of Regents Relating to a Prohibition Against Traditional Standardized Testing for Students in Grades K-2, Removal of K-2 Tests From List of Approved Assessments, Amendment of the Definition of Core Subject for the State Growth or Other Comparable Measures Subcomponent, and a Limitation on Instructional Time Spent on Taking Local Assessments for Purposes of Annual Professional Performance Reviews (APPR)?

### Reason(s) for Consideration

Review of Policy.

## **Proposed Handling**

The proposed amendment is submitted to the P-12 Education Committee and the Higher Education Committee for emergency adoption at its February 2014 meeting (see Attachment A - Amendment to the Regulations).

## **Procedural History**

A Notice of Proposed Rule Making and Emergency Adoption will be published in the State Register on February 26, 2014. A Notice of Emergency Adoption is attached as Attachment B. Supporting materials are available upon request to the Secretary to the Board of Regents.

## **Background**

The proposed amendment makes a series of changes to Subpart 30-2 of the Rules of the Board of Regents, that support the commitment made by the Board of Regents and the Commissioner to ensure that students are not unnecessarily burdened by non-essential testing that takes away from the core instructional time in our classrooms and schools. Further, these amendments help to ensure that our youngest students in grades kindergarten through second grade are not subject to traditional standardized testing.

First, the proposed amendment provides that no APPR plan shall be approved by the Commissioner for use in the 2014-2015 school year or thereafter that provides for the administration of traditional standardized assessments to students in kindergarten through grade two that are not being used for diagnostic purposes or are required to be administered by federal law, including but not limited to assessments developed by any vendor, third party or other comparable entity. The proposed amendment does not preclude the use of school- or BOCES-wide, group, or team results using State assessments that are administered to students in higher grades in the school or a district, regional or BOCES-developed student assessment that is developed in collaboration with a vendor, if otherwise allowed under this section or guidelines of the Commissioner. If the proposed amendment is adopted, on March 2, 2014, the Department will remove all traditional standardized assessments approved for use in kindergarten through grade two from the list of approved student assessments for use in APPR plans for the 2014-2015 school year and thereafter. However, the proposed amendment ensures that any APPR plan that has been approved by the Commissioner for use in the 2013-2014 school year shall remain in effect in accordance with Education Law §3012-c(2)(l) and those districts and BOCES will be able to continue to use those assessments until a material change is made to their APPR plan to eliminate the use of such assessments.

Second, the proposed amendment provides that if any district or BOCES wishes to make material changes to a plan that solely relate to the elimination of unnecessary assessments that are used on students for APPR purposes, the Department shall

expedite the review of such changes and will only review those sections of the plan that relate to the eliminated assessments to ensure compliance with Education Law §3012-c and Subpart 30-2.

The proposed amendment also requires that for any APPR plan submitted to the Commissioner for approval for use in the 2014-2015 school year, the plan must include a signed certification by the superintendent, district superintendent or chancellor that attests that no more than one percent of total instructional time in each classroom or program of the district or BOCES is spent taking any locally determined traditional standardized assessments from the state's approved list or district, regional, or BOCES-developed assessments for APPR purposes. This certification does not, however, apply to assessments used for formative or diagnostic purposes.

The proposed amendment also re-defines core subject areas for the State growth or other comparable measures subcomponent to remove sixth through eighth grade social studies and sixth through seventh science from the definition. This revision will help to provide additional, no-cost options to districts and BOCES who may wish to utilize a school-wide, group, or team measure based on one or more State or Regents assessments in sixth through eighth social studies and/or sixth through seventh science.

### **Recommendation**

VOTED: That Subpart 30-2 of the Rules of the Board of Regents be amended, as submitted, effective February 11, 2014 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 ensure that school districts and BOCES are aware of the prohibition against the use of certain traditional standardized assessments on students in grades K through 2 purposes of annual professional performance reviews and the removal of the locally determined option to choose an assessment for these grades from the State approved list of third-party assessments. Districts and BOCES also need to be aware of the option to file for an expedited material change if they wish to amend their APPR plan to eliminate unnecessary assessments on students. In addition, for districts and BOCES that will be submitting material changes to their plans for the 2014-2015 school year, they need to be notified that they will be required to submit a signed certification from the superintendent, district superintendent or chancellor that no more than one percent of instructional time will be spent taking third party assessments or district, BOCES or regional assessments.

### **Timetable for Implementation**

It is anticipated that the proposed amendment will be adopted by the P-12 Education Committee and the Higher Education Committee as an emergency measure at its February meeting. If adopted as an emergency measure, the proposed amendment will be effective on February 11, 2014. The proposed amendment will then come before the P-12 Education Committee and Higher Education Committee for recommendation, and to the Full Board for permanent adoption at the April Regents meeting. If adopted at the April Regents meeting, the proposed amendment will become effective on May 14, 2014.

AMENDMENT TO THE RULES OF THE BOARD OF REGENTS

Pursuant to sections 101, 207, 215, 305 and Section 3012-c of the Education Law.

1. Subdivision (b) of section 30-2.2 of the Rules of the Board of Regents shall be amended, effective February 11, 2014, to read as follows:

(b) Approved student assessment shall mean a standardized student assessment approved by the commissioner for inclusion in the State Education Department's lists of approved standardized student assessments for the locally selected measures subcomponent and/or to measure student growth in non-tested subjects for the State assessment or other comparable measures subcomponent. Effective March 2, 2014, all traditional standardized assessments for students in kindergarten through grade two shall be removed from the list of approved student assessments for use in annual professional performance review plans for the 2014-2015 school year and thereafter. However, any school district or board of cooperative education services with an annual professional performance review plan approved or determined by the Commissioner for use in the 2013-2014 school year that provides for the use of an approved student assessment for students in kindergarten through grade two remains in effect in accordance with Education Law §3012-c(l)(2) and the district or board of cooperative educational services may continue to use such assessments until a material change is made and approved by the Commissioner to eliminate such use.

2. Paragraph (2) of subdivision (a) of section 30-2.3 of the Rules of the Board of Regents shall be amended, effective February 11, 2014, to read as follows:

(2) By July 1, 2012, the governing body of each school district and BOCES shall adopt a plan, on a form prescribed by the Commissioner, for the annual professional performance review of all of its classroom teachers and building principals in accordance with the requirements of Education Law §3012-c and this Subpart, and shall submit such plan to the Commissioner for approval. The plan may be an annual or multi-year plan, for the annual professional performance review of all of its classroom teachers and building principals. The Commissioner shall approve or reject the plan by September 1, 2012, or as soon as practicable thereafter. The Commissioner may also reject a plan that does not rigorously adhere to the provisions of Education Law §3012-c and the requirements of this Subpart. Should any plan be rejected, the Commissioner shall describe each deficiency in the submitted plan and direct that each such deficiency be resolved through collective bargaining to the extent required under article fourteen of the Civil Service Law. If any material changes are made to the plan, the school district or BOCES must submit the material changes, on a form prescribed by the Commissioner, to the Commissioner for approval. If material changes are made to a plan that solely relate to the elimination of unnecessary assessments on students, the Commissioner shall expedite his or her review of such material changes and solely review those sections of the plan that relate to the eliminated assessments to ensure compliance with Education Law §3012—c and this Subpart, provided that the superintendent, district superintendent or chancellor shall provide a written explanation of the changes made to the plan, on a form prescribed by the commissioner, and certify that no other material changes have been made to the plan. To the extent that by July 1, 2012 or by July 1 of any subsequent year, if all of the terms of the plan have not been finalized as a result of unresolved collective bargaining negotiations, the entire plan

shall be submitted to the Commissioner upon resolution of all of its terms, consistent with Article 14 of the Civil Service Law.

3. A new paragraph (4) shall be added to subdivision (a) of section 30-2.3 of the Rules of the Board of Regents, effective February 11, 2014, to read as follows:

(4) Any plan submitted to the Commissioner on or after March 2, 2014 for use in the 2014-2015 school year and thereafter shall include a signed certification, on a form prescribed by the Commissioner by the superintendent, district superintendent or chancellor, attesting that no more than one percent of total instructional time in each classroom or program of the district or BOCES is spent taking any locally determined traditional standardized assessments from the approved list or district, regional or BOCES developed assessments for purposes of Education Law §3012-c. This paragraph shall not apply to assessments used for formative or diagnostic purposes.

4. Subparagraph (iii) of paragraph (1) of subdivision (b) of section 30-2.3 of the Rules of the Board of Regents shall be amended, effective February 11, 2014, to read as follows:

(iii) Except as otherwise provided in subparagraphs (i) and (ii) of this paragraph, for classroom teachers who teach one of the core subjects, as defined in this subparagraph, where there is no approved growth or value-growth model at that grade level or in that subject, the school district or BOCES shall measure student growth based on a State-determined district-or BOCES-wide student growth goal setting process using a State assessment if one exists, or a Regents examination or department-approved alternative examination as described in section 100.2(f) of this Title (including, but not limited to, advanced placement examinations, International Baccalaureate examinations, SAT II, etc.). If there is no State assessment or Regents

examination for these grades/subjects, the district or BOCES must measure student growth based on the State determined goal-setting process with an approved student assessment, or a department-approved alternative examination as described in section 100.2(f) of this Title or a district, regional or BOCES developed assessment that is rigorous and comparable across classrooms. For purposes of this subparagraph, core subjects shall be defined as science [and social studies] in grades six to] grade eight and high school courses in English language arts, mathematics, science and social studies that lead to a Regents examination in the 2010-2011 school year, or a State assessment in the 2012-2013 school year or thereafter. A school district or BOCES shall generate a score from 0 to 20 points for this subcomponent.

5. A new subdivision (e) shall be added to section 30-2.5 of the Rules of the Board of Regents shall be amended, effective February 11, 2014, to read as follows:

(e) Notwithstanding any other provision of this Subpart to the contrary, no annual professional performance review plan shall be approved by the Commissioner for use in the 2014-2015 school year or thereafter that provides for the administration of traditional standardized assessments to students in kindergarten through grade two that are not being used for diagnostic purposes or are required to be administered by federal law, including but not limited to assessments developed by any vendor, third party or other comparable entity; except that nothing in this subdivision shall preclude the use of school- or-BOCES-wide, group or team results using State assessments that are administered to students in higher grades in the school or a district, regional or BOCES developed student assessment that is developed in collaboration with a vendor, if otherwise allowed under this section or guidelines of the Commissioner. However, this subdivision shall not apply to any annual professional performance review plan

approved or determined by the Commissioner for use in the 2013-2014 school year which remains in effect in the 2014-2015 or thereafter in accordance with Education Law §3012-c(2)(l).

6. Subdivision (a) of section 30-2.8 of the Rules of the Board of Regents shall be amended, effective February 11, 2014, to read as follows:

(a) Approval of student assessments for the evaluation of classroom teachers and building principals. An assessment provider who seeks to place an assessment on the list of approved student assessments under this section shall submit to the Commissioner a written application in a form and within the time prescribed by the Commissioner. Pursuant to section 30-2.2 of this Subpart, effective March 2, 2014, the Commissioner will remove the names of any traditional standardized assessments approved for use in kindergarten through grade two from the list of approved assessments for use in the 2014-2015 school year and thereafter.



## **Attachment B**

### STATEMENT OF FACTS AND CIRCUMSTANCES WHICH NECESSITATE EMERGENCY ACTION

Because the Board of Regents meets at scheduled intervals, the earliest the proposed amendment could be presented for regular (non-emergency) adoption, after publication in the State Register and expiration of the 45-day public comment period provided for in State Administrative Procedure Act (SAPA) section 202(1) and (5), is the April 2014 Regents meeting. Furthermore, pursuant to SAPA section 203(1), the earliest effective date of the proposed amendment, if adopted at the February 2014 meeting, would be May 14, 2014, the date a Notice of Adoption would be published in the State Register. However, emergency action to adopt the proposed rule is necessary now for the preservation of the general welfare to ensure that school districts and BOCES are aware of the prohibition against the use of certain assessments on students in grades K through 2 purposes of annual professional performance reviews and the removal of the locally determined option to choose an assessment for these grades from the State approved list of third-party assessments. Districts and BOCES also need to be aware of the option to file for an expedited material change if they wish to amend their APPR plan to eliminate unnecessary assessments on students. In addition, for districts and BOCES that will be submitting material changes to their plans for the 2014-2015 school year, they need to be notified that they will be required to submit a signed certification from the superintendent, district superintendent or chancellor that no more than one percent of instructional time will be spent taking third party assessments or district, BOCES or regional assessments.

It is anticipated that the emergency rule will be presented to the Board of Regents for adoption as a permanent rule at the April 2014 Regents meeting, which is the first scheduled meeting after expiration of the 45-day public comment period mandated by the State Administrative Procedure Act for proposed rulemakings.