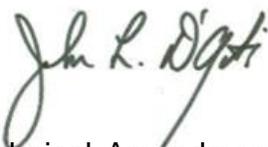




THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK / ALBANY, NY 12234

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

**FROM:** John D'Agati 

**SUBJECT:** Proposed Technical Amendments to Subpart 30-2 of the Rules of the Board of Regents to Clarify the Requirements for Districts and Boards of Cooperative Educational Services (BOCES) that Opt to Use an Assessment that is Not a Traditional Standardized Assessment for Grades K-2 for Purposes of Annual Professional Performance Reviews (APPR)

**DATE:** March 3, 2014

**AUTHORIZATION(S):**



### SUMMARY

#### Issue for Decision

Should the Board of Regents amend Subpart 30-2 of the Rules of the Board of Regents to Clarify the Requirements for Districts/BOCES of an Assessment that is Not a Traditional Standardized Third-Party Assessment for Grades K-2 for APPR purposes?

#### Reason(s) for Consideration

Review of Policy.

#### Proposed Handling

The proposed amendment is submitted to the full board for emergency adoption at its March 2014 meeting (see Attachment A - Amendment to the Regulations).

## **Procedural History**

At its February meeting, the Board of Regents made a series of changes to Subpart 30-2 of the Rules of the Board of Regents, effective February 11, 2014, that support the commitment made by the Board of Regents and the Commissioner to ensure that students are not unnecessarily burdened by more testing than necessary or 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. A Notice of Proposed Rule Making and Emergency Adoption was published in the State Register on February 26, 2014.

If the revised regulation is adopted by the Board of Regents at its March meeting, a Revised Rule Making and Emergency Adoption will be published in the State Register on March 26, 2014. A Statement of Facts and Circumstances Justifying the Emergency is attached as Attachment B. Supporting materials are available upon request to the Secretary to the Board of Regents.

## **Background**

The regulation adopted in February provides that effective March 2, 2014, all traditional standardized assessments approved for use in kindergarten through grade two will be removed 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 that 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.

In addition, the regulation adopted in February provides that effective March 2, 2014, for districts and BOCES that will be submitting material changes to their plans for the 2014-2015 school year, 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 traditional standardized third-party assessments or district, BOCES or regional assessments.

## **Proposed Amendment**

Following the emergency adoption of the February 2014 regulation, the Department received several questions on what third-party assessments can be used in grades K-2 for APPR purposes. This memorandum and the revised regulation attempts to clarify what third-party assessments may be selected by a district/BOCES for use in grades K-2 for APPR purposes.

Effective March 2, 2014, all third-party assessments used in grades K-2 have been removed from the actual "approved assessment" list. The Commissioner will no

longer require a district or BOCES to use the RFQ process when selecting third-party assessments for use in kindergarten, first, or second grade for APPR purposes. Rather, pursuant to this regulation, the Commissioner will issue guidance consistent with the minimum criteria prescribed in section 30-2.8 of the Rules of the Board of Regents to be used by school districts/BOCES when selecting an assessment that is not a traditional standardized third-party assessment in grades K-2 for APPR purposes in the 2014-2015 school year and thereafter. The superintendent, district superintendent, or chancellor will be required to certify in its APPR plan that any third-party assessment they are using in grades kindergarten through two is not a traditional standardized assessment as defined by the Commissioner in guidance, and that the assessment meets the minimum requirements prescribed by the Commissioner in guidance.

In addition, the proposed amendment seeks to clarify that the superintendent, district superintendent or chancellor will only have to include traditional standardized third-party assessments and traditional standardized district, regional or BOCES developed assessments in their calculation of the one percent for the certification relating to instructional time and not assessments that are not a traditional standardized assessment.

### **Recommendation**

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

VOTED: That the emergency rule amending Subpart 30-2 of the Rules of the Board of Regents that was adopted by the Board of Regents as an emergency measure at the February 10-11 meeting is repealed, effective March 11, 2014; and, it is further

VOTED: That Subpart 30-2 of the Rules of the Board of Regents be amended, as submitted, effective March 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 the emergency rule adopted at the February Regents meeting and revised at the March meeting remains continuously in effect until it can be adopted as a permanent rule and to ensure that school districts and BOCES are aware of the requirements for using assessments that are not traditional standardized third-party assessments in grades K-2 for APPR purposes.

### **Timetable for Implementation**

It is anticipated that the proposed amendment will be adopted by the Full Board as an emergency measure at its March meeting. If adopted as an emergency measure, the proposed amendment will be effective on March 11, 2014. The proposed amendment will then come before the Full Board for permanent adoption at its May Regents meeting. If adopted at the May Regents meeting, the proposed amendment will become effective on June 17, 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. That the emergency rule amending Subpart 30-2 of the Rules of the Board of Regents that was adopted by the Board of Regents as an emergency measure at the February 10-11 meeting is repealed, effective March 11, 2014.

2. Subdivision (b) of section 30-2.2 of the Rules of the Board of Regents shall be amended, effective March 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 or for grades kindergarten through two, an assessment that is not a traditional standardized assessment that meets the requirements in paragraph (1) of this subdivision.

(1) Approved Assessments in grades kindergarten through two.

(i) Effective March 2, 2014, all standardized assessments for students in kindergarten through grade two shall be removed from the actual list of approved student assessments for use in annual professional performance review plans for the 2014-2015 school year and thereafter and traditional standardized assessments in grades kindergarten through grade two will no longer be approved assessments for these grades. However, an assessment that is not a traditional standardized assessment shall be considered an approved student assessment if the superintendent,

district superintendent, or chancellor of a school district/BOCES that chooses to use such assessment certifies in its APPR plan that the assessment is a not a traditional standardized assessment, as defined by the Commissioner in guidance, and that the assessment meets the minimum requirements prescribed by the Commissioner in guidance.

(ii) Any school district or BOCES 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 BOCES may continue to use such assessments until a material change is made and approved by the Commissioner to eliminate such use.

3. Paragraph (2) of subdivision (a) of section 30-2.3 of the Rules of the Board of Regents shall be amended, effective March 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.

4. A new paragraph (4) shall be added to subdivision (a) of section 30-2.3 of the Rules of the Board of Regents, effective March 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 third-party assessments from the approved list or traditional standardized 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.

5. Subparagraph (iii) of paragraph (1) of subdivision (b) of section 30-2.5 of the Rules of the Board of Regents shall be amended, effective March 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.

6. A new subdivision (e) shall be added to section 30-2.5 of the Rules of the Board of Regents shall be amended, effective March 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).

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

(a) Approval of student assessments for the evaluation of classroom teachers and building principals. [An] Except as otherwise provided in subdivision (e) of this section for assessments in grades kindergarten through two, 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.

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

(e) 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. However, an assessment that is not a traditional standardized assessment may be considered an approved student assessment if the superintendent, district superintendent, or chancellor certifies in its APPR plan that the assessment is a not a traditional standardized assessment, as defined by the Commissioner in guidance, and that the assessment meets the minimum requirements prescribed by the Commissioner in guidance.

## **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 May 2014 Regents meeting. Furthermore, pursuant to SAPA section 203(1), the earliest effective date of the proposed amendment, if adopted at the May 2014 meeting, would be June 17, 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 the emergency rule adopted at the February Regents meeting, and revised at the March Regents meeting, remains continuously in effect until it can be adopted as a permanent rule and so school districts and BOCES are aware of the requirements for use of an assessment that is not a traditional standardized assessment for grades kindergarten through two for the purposes of annual professional performance reviews for districts/BOCES that opt to use an assessment that is not a traditional standardized third-party assessment in these grades.

It is anticipated that the emergency rule will be presented to the Board of Regents for adoption as a permanent rule at the May 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.