



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

TO: P-12 Education Committee

FROM: Ken Slentz 

SUBJECT: Proposed addition of §§ 100.2(II) and 104.3 and amendment of §§ 100.3(b)(2), 100.4(b)(2), and 100.4(e) of the Regulations of the Commissioner relating to Grades 3-8 ELA and Mathematics Assessments and Promotion and Placement Determinations, and Student Official Transcripts and Permanent Records

DATE: April 21, 2014

AUTHORIZATION(S):

 

SUMMARY

Issue for Decision

Should the Regents approve as an emergency action the proposed additions of sections 100.2(II) and 104.3 and amendment of sections 100.3(b)(2), 100.4(b)(2), and 100.4(e) of the Regulations of the Commissioner of Education, to implement Chapter 56 of the Laws of 2014, relating to grades 3-8 English Language Arts (ELA) and mathematics assessments and promotion and placement determinations, and student official transcripts and permanent records?

Reason(s) for Consideration

Required by Statute (L. 2014, Ch. 56).

Proposed Handling

The proposed amendment is being presented to the P-12 Education Committee for emergency adoption at its April 2014 meeting. A copy of the proposed amendment

and statement of the facts and circumstances which necessitate emergency action are attached. It is anticipated that a Notice of Emergency Adoption and Proposed Rule Making will be published in the State Register on May 14, 2014.

Procedural History

On March 31, 2014, Governor Cuomo signed Chapter 56 of the Laws of 2014. Chapter 56 enacts into law major components of legislation necessary to implement the education, labor, housing, and family assistance budget for the 2014-2015 state fiscal year.

Part AA, Subpart B of Chapter 56 of the Laws of 2014 adds new subdivisions (45) and (46) to Education Law section 305, which direct the Commissioner to provide that no school district or board of cooperative educational services (BOCES) may place or include on a student's official transcript or maintain in a student's permanent record any individual student score on a State administered standardized English language arts or mathematics assessment for grades three through eight, and that any test results on such assessments sent to parents/persons in parental relation include a clear and conspicuous notice that such results will not be included on the student's official transcript or in the student's permanent record and are being provided for diagnostic purposes. The statute provides that these provisions shall expire and be deemed repealed on December 31, 2018.

Part AA, Subpart C of Chapter 56 of the Laws of 2014 added a new subdivision (47) to Education Law section 305, which directs the Commissioner to provide that no school district shall make any student promotion or placement decisions based solely or primarily on student performance on the State administered standardized English language arts and mathematics assessments for grades three through eight. However, a school district may consider student performance on such State assessments provided that the school district uses multiple measures in addition to such assessments and that such assessments do not constitute the major factor in such determinations. In addition, the Commissioner shall require every school district to annually notify the parents and persons in parental relation to the students attending such district of the district's grade promotion and placement policy along with an explanation of how such policy was developed. Such notification may be provided on the school district's website, if one exists, or as part of an existing informational document that is provided to parents and persons in parental relation.

Background Information

The proposed amendment of sections 100.3(b)(2), 100.4(b)(2), and 100.4(e) provides that no school district shall make promotion or placement decisions based solely or primarily on student performance on the Grades 3-8 ELA and math assessments, but that a school district may consider student performance on the assessments provided it uses multiple measures in addition to the assessments. The proposed addition of section 100.2(II) requires each school district to adopt a grade

promotion and placement policy that is consistent with the above amendments, and annually notify parents of policy along with an explanation of how the policy was developed. Such notification may be provided on the school district's website, if one exists, or as part of an existing informational document that is provided to parents and persons in parental relation.

This is consistent with the Department's February 2014 discussion item, which stated that if districts elect to make promotion decisions based on student performances on the Grades 3-8 ELA and math assessments, that the Department strongly encourages that the results be used in combination with other measures of student performance, including writing samples, class work, homework, teacher observations, and other relevant information.

Additionally, the proposed addition of section 104.3 provides, for the period commencing on April 1, 2014 and expiring on December 31, 2018, that no school district or BOCES may place or include on a student's official transcript or maintain in a student's permanent record any individual student score on a State administered standardized ELA or mathematics assessment for grades 3-8, and that any test results on assessments sent to parents include a clear and conspicuous notice that the results will not be included on the student's official transcript or in the student's permanent record and are being provided to the student and parents for diagnostic purposes.

Recommendation

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

VOTED: That subdivision (II) of section 100.2 and section 104.3 of the Regulations of the Commissioner be added and that paragraphs 100.3(b)(2) and 100.4(b)(2), and subdivision 100.4(e) be amended, as submitted, effective April 29, 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 immediately conform the Commissioner's Regulations to Subparts B and C of Part AA of Chapter 56 of the Laws of 2014, relating to grades 3-8 ELA and mathematics assessments and promotion and placement determinations, and student official transcripts and permanent records, and thus ensure the timely implementation of the statute.

Timetable for Implementation

If adopted as an emergency rule at the April meeting, the proposed amendment will become effective on April 29, 2014, and will remain in effect for 90 days. It is anticipated that the proposed amendment will be presented for adoption as a permanent rule at the July Regents meeting, after publication of a Notice of Emergency Rule Making and Proposed Rule Making in the State Register and expiration of a the 45-day public comment period prescribed in the State Administrative Procedure Act.

8 NYCRR §§100.2, 100.3, 100.4 and 104.2

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

The proposed rule is necessary to conform the Commissioner's Regulations to Subparts B and C of Part AA of Chapter 56 of the Laws of 2014, which became effective April 1, 2014.

Part AA, Subpart B of Chapter 56 of the Laws of 2014 adds new subdivisions (45) and (46) to Education Law section 305, which direct the Commissioner to provide that no school district or board of cooperative educational services may place or include on a student's official transcript or maintain in a student's permanent record any individual student score on a State administered standardized English language arts or mathematics assessment for grades three through eight, and that any test results on such assessments sent to parents/persons in parental relation include a clear and conspicuous notice that such results will not be included on the student's official transcript or in the student's permanent record and are being provided for diagnostic purposes. The statute provides that these provisions shall expire and be deemed repealed on December 31, 2018.

Part AA, Subpart C of Chapter 56 of the Laws of 2014 adds a new subdivision (47) to Education Law section 305, which directs the Commissioner to provide that no school district shall make any student promotion or placement decisions based solely or primarily on student performance on the state administered standardized English language arts and mathematics assessments for grades three through eight. However, a school district may consider student performance on such state assessments

provided that the school district uses multiple measures in addition to such assessments and that such assessments do not constitute the major factor in such determinations. In addition, the Commissioner shall require every school district to annually notify the parents and persons in parental relation to the students attending such district of the district's grade promotion and placement policy along with an explanation of how such policy was developed. Such notification may be provided on the school district's website, if one exists, or as part of an existing informational document that is provided to parents and persons in parental relation.

Because the Board of Regents meets at scheduled intervals, the July 10-11, 2014 meeting is the earliest the proposed rule could be presented for adoption, after publication of a Notice of Emergency Adoption and Proposed Rule Making in the State Register on May 14, 2014 and expiration of the 45-day public comment period required under the State Administrative Procedure Act. Furthermore, pursuant to SAPA section 203(1), the earliest effective date of the proposed rule, if adopted at the July meeting, would be July 30, 2014, the date a Notice of Adoption would be published in the State Register. However, emergency adoption of these regulations is necessary now for the preservation of the general welfare to immediately conform the Commissioner's Regulations to timely implement Subparts B and C of Part AA of Chapter 56 of the Laws of 2014, relating to grades 3-8 ELA and mathematics assessments and promotion and placement determinations, and student official transcripts and permanent records, and thus ensure the timely implementation of the statute.

It is anticipated that the proposed rule will be presented to the Board of Regents for permanent adoption at its July 10-11, 2014 meeting, which is the first scheduled meeting after expiration of the 45-day public comment period mandated by the State Administrative Procedure Act.

AMENDMENT OF THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to Education Law sections 101, 207, 208, 209, 210, 215, 305, 308, 309 and 3204

1. Subdivision (II) of section 100.2 of the Regulations of the Commissioner is added, effective April 29, 2014, as follows:

(II) Grade promotion and placement policy. Each school district shall adopt a grade promotion and placement policy that is consistent with sections 100.3(b)(2)(iv), 100.4(b)(2)(v) and 100.4(e)(6) of this Part, and annually notify the parents and persons in parental relation to the students attending such district of such policy along with an explanation of how the policy was developed. Such notification may be provided on the school district's website, if one exists, or as part of an existing informational document that is provided to parents and persons in parental relation.

2. Paragraph (2) of subdivision (b) of section 100.3 of the Regulations of the Commissioner is amended, effective April 29, 2014, as follows:

(2) Required assessments.

(i) Except as otherwise provided in subparagraphs (ii) and (iii) of this paragraph, at the specified grade level, all students shall take the following tests, provided that testing accommodations may be used as provided for in section 100.2(g) of this Part in accordance with department policy:

(a) beginning in January 1999, the English language arts elementary assessment and the mathematics elementary assessment shall be administered in grade four and, beginning in the 2005-2006 school year, the English language arts elementary assessments and the mathematics elementary assessment shall be administered in grades three and four; and

(b) beginning in January 2000, the elementary science assessment shall be administered in grade four.

(ii) Students receiving home instruction pursuant to section 100.10 of this Part may take, but shall not be required to take, the State assessments required of public school students.

(iii) In accordance with their individualized education programs, students with disabilities instructed in the alternate academic achievement standards defined in section 100.1(t)(2)(iv) of this Part shall be administered a State alternate assessment to measure their achievement.

(iv) Notwithstanding the provisions of this section, no school district shall make any student promotion or placement decisions based solely or primarily on student performance on the English language arts elementary assessments and the mathematics elementary assessments administered in grades three and four. However, a school district may consider student performance on such assessments provided the school district uses multiple measures in addition to such assessments and that such assessments do not constitute the major factor in such determinations.

3. Paragraph (2) of subdivision (b) of section 100.4 of the Regulations of the Commissioner is amended, effective April 29, 2014, as follows:

(2) Required assessments.

(i) Except as otherwise provided in subparagraphs (iv) and (v) of this paragraph, all students shall take the following assessments, provided that testing accommodations may be used as provided for in section 100.2(g) of this Part in accordance with department policy:

(ii) beginning with the 2005-06 school year, English language arts and mathematics assessments shall be administered in grades five and six;

(iii) for school years prior to July 1st of the 2010-2011 school year, all students in grade five shall take the social studies elementary assessment;

(iv) students receiving a program of home instruction pursuant to section 100.10 of this Part may take, but shall not be required to take, the State assessments required of public school students;

(v) in accordance with their individualized education programs, students with disabilities instructed in the alternate academic achievement standards defined in section 100.1(t)(2)(iv) of this Part shall be administered a State alternate assessment to measure their achievement;

(vi) beginning September 1, 2000 and continuing up to and including the 2004-2005 school year, fifth grade students who scored at Level 1 of the State designated performance levels on the English language arts elementary assessment and/or the

mathematics elementary assessment administered in grade four shall receive at least one semester of academic intervention services and be retested no later than the completion of grade five. Multiple sources of evaluation, including, but not limited to, a commercial test or other external test of demonstrated technical quality determined by the school district to be a valid and reliable means of evaluating a student's progress in achieving the elementary level State learning standards in English language arts and mathematics, shall be used to retest students in accordance with the district-adopted or district-approved procedure established pursuant to section 100.2(ee) of this Part;

(v) Notwithstanding the provisions of this section, no school district shall make any student promotion or placement decisions based solely or primarily on student performance on the English language arts assessments and the mathematics assessments administered in grades five and six. However, a school district may consider student performance on such assessments provided the school district uses multiple measures in addition to such assessments and that such assessments do not constitute the major factor in such determinations.

4. Subdivision (e) of section 100.4 of the Regulations of the Commissioner of Education is amended, effective April 29, 2014, as follows:

(e) Required assessments in grades seven and eight. Except as otherwise provided in subdivisions (f) and (g) of this section, and except for students who have been admitted to a higher grade without completing the grade at which the assessment is administered, all students shall take the following assessments, provided that testing

accommodations may be used as provided for in section 100.2(g) of this Part in accordance with department policy.

(1) Beginning with school year 1998-99, the English language arts intermediate assessment shall be administered in grade eight. Beginning with the 2005-2006 school year, English language arts assessments shall be administered in grades seven and eight.

(2) Beginning with the 1998-99 school year, the mathematics intermediate assessment shall be administered in grade eight. Beginning with the 2005-2006 school year, mathematics assessments shall be administered in grades seven and eight, provided that, for the 2013-2014 school year, students who attend grade seven or eight may take a Regents examination in mathematics in lieu of or in addition to the grade seven or eight mathematics assessment, in accordance with section 100.18(b)(14) of this Part.

(3) The program evaluation test in social studies in grade eight, beginning in May 1989. Beginning with the school year 2000-2001 through the 2009-2010 school year, the social studies intermediate assessment shall replace the program evaluation test and shall be administered in grade eight.

(4) Beginning with the school year 2000-2001, the science intermediate assessment shall be administered in grade eight; provided that students who attend grade eight may take a Regents examination in science in lieu of or in addition to the grade eight science intermediate assessment, in accordance with this section and section 100.18(b)(14) of this Part, and provided further that the science intermediate

assessment shall not be administered in grade eight to students who take such assessment in grade seven and are being considered for placement in an accelerated high school-level science course when they are in grade eight pursuant to subdivision (d) of this section.

(5) Such other assessments as the commissioner determines appropriate.

(6) Notwithstanding the provisions of this section, no school district shall make any student promotion or placement decisions based solely or primarily on student performance on the English language arts assessments and the mathematics assessments administered in grades seven and eight. However, a school district may consider student performance on such assessments provided the school district uses multiple measures in addition to such assessments and that such assessments do not constitute the major factor in such determinations.

5. Section 104.3 of the Regulations of the Commissioner of Education is added, effective April 29, 2014, as follows:

§ 104.3 Prohibition on inclusion of individual student scores on State administered standardized English language arts or mathematics assessments for grades three through eight. During the period commencing on April 1, 2014 and expiring on December 31, 2018:

(a) no school district or board of cooperative educational services may place or include on a student's official transcript or maintain in a student's permanent record any individual student score on a State administered standardized English language arts or mathematics assessment for grades three through eight, provided that nothing herein

shall be construed to interfere with required State or federal reporting or to excuse a school district from maintaining or transferring records of such test scores separately from a student's permanent record, including for purposes of required State or federal reporting; and

(b) any test results on a State administered standardized English language arts or mathematics assessment for grades three through eight sent to parents or persons in parental relation to a student shall include a clear and conspicuous notice that such results will not be included on the student's official transcript or in the student's permanent record and are being provided to the student and parents for diagnostic purposes.