



On November 14, 2011, the Board of Regents and Commissioner of Education appointed Henry M. Greenberg to serve in the position of Special Investigator, on a *pro bono* basis. Mr. Greenberg's charge was two-fold: *first*, conduct a complete review of the Department's processes and procedures for receiving, reviewing and investigating reports of alleged improprieties involving the State's student assessments; and *second*, make recommendations for the Board of Regents and Commissioner's consideration to systematically improve the Department's policies and procedures.

Mr. Greenberg's review included, but was not limited to, the Department's processes and procedures for intake, review, referral, investigation, findings, response, follow-up, and State records retention policy regarding student answer papers. He interviewed numerous Department staff and other education officials; examined the Department's case files, guidance materials, manuals, memoranda, website, relevant statutes and regulations, and other documents; and reviewed other states' best practices, guidance materials, manuals, websites, relevant statutory and regulatory schemes, and other documents. Currently, allegations of testing irregularities are investigated and overseen at the local level by local school districts, such as the Special Commissioner of Investigation for the New York City School District and the Office of Special Investigations in the New York City Department of Education, or BOCES District Superintendents.

#### Recommendation

It is recommended that the Board of Regents accept and approve the summary of findings and recommendations outlined in the attached document.

#### Timetable for Implementation

The recommendations can be implemented in the next 12 months.

## Summary of Independent Review of the NYS Education Department’s Test Integrity Policies and Procedures

Findings	Recommendations
<b>Create a New Test Security Unit and Provide It With the Resources to Detect and Deter Security Breaches and Other Testing Irregularities in State Assessments</b>	
<p>The State Education Department’s (“SED’s”) office of Assessment, Policy Development and Administration (“APDA”) cannot adequately receive, review and follow-up on reports of allegations in the administration and scoring of state assessments. Current staff is focused on test development and administration. They lack appropriate training/skill sets and only devote a fraction of their time to this work.</p> <p>APDA relies solely on local education agencies (“LEAs”) and the District Superintendents from the state’s 37 BOCES to conduct investigations and report the results to APDA.</p> <p>There is a lack of written policies and procedures and quality control mechanisms and decision-making is made on an inconsistent basis.</p>	<p>Create a new Test Security Unit (“TSU”) and provide sufficient resources. TSU should be staffed with at least 5 to 10 full-time employees assigned exclusively to test integrity work. SED should identify the necessary skills and training for all personnel assigned to TSU.</p> <p>As described below, under the direction of the Board of Regents, TSU would be responsible for:</p> <ul style="list-style-type: none"> <li>• Directly investigating cases involving serious allegations and more aggressively pursuing Part 83 moral character cases where appropriate.</li> <li>• Instituting a new state-of-the-art intake and data gathering system.</li> <li>• Supporting LEAs and BOCES DSs tasked with conducting investigations.</li> <li>• Aggressively overseeing local integrity investigations.</li> <li>• Recommending statewide standards and guidelines for teachers and administrators to the Board of Regents.</li> <li>• Increasing the frequency and strategic use of data forensics.</li> <li>• Developing written operational policies and procedures for the intake, referral, review, tracking and disposition of allegations; the investigation and prosecution of moral character cases.</li> <li>• Instituting quality control mechanisms to ensure compliance with established policies and procedures.</li> <li>• Conducting thorough review of existing security policies and procedures for state-administered assessments and implement enhancements of security protocols.</li> </ul>

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<b>Institute New State-of-the-Art Intake and Data Gathering Systems</b>	
<p>The current paper-based intake for allegations results in the potential underreporting and underestimation of information. The tracking system for allegations is also paper-based.</p>	<ul style="list-style-type: none"> <li>• Standardize incident reporting and tracking.</li> <li>• Create a secure online incident reporting process, in addition to existing reporting portals.</li> <li>• Transition from paper to electronic tracking system for allegations and prepare a written summary for each verified allegation.</li> </ul>
<p>Under existing regulations only principals are expressly required to report certain testing irregularities, failing to capture all allegations.</p>	<p>Mandate reporting of allegations to SED by <u>any person</u> who learns of any security breach or other testing irregularity and sanction those who fail to comply.</p>
<p>The current electronic database for allegations is incomplete and unreliable, in that important information is not collected or is inadequately analyzed.</p>	<p>Collect in database all relevant information regarding allegations, including, but not limited to:</p> <ul style="list-style-type: none"> <li>• Overall case disposition by type for each (annual) reporting period;</li> <li>• Average time from initial report to final case disposition (by case type); and</li> <li>• Characteristics of effective documentation and corrective action plans.</li> </ul>
<p>The existing database does not produce summary reports that make possible analysis of test security trends over time.</p>	<p>Utilize software and other technologies that maximize capacity to analyze data and produce summary reports. (Board of Regents 2012-13 Budget Request)</p>

<b>Support LEAs and BOCES DSs Tasked with Conducting Investigations</b>	
<p>APDA provides no relevant training for LEAs and BOCES district superintendents.</p>	<p>Provide training for LEAs and BOCES through webinars, written guidance and other means. Create a webpage dedicated to testing irregularities.</p>
<p>No established policies and procedures exist addressing how LEA and BOCES investigations should be conducted.</p>	<p>Develop model policies and procedures for local integrity investigations, or, at a minimum, identify key elements that LEAs and BOCES should consider when developing their own policies and procedures.</p> <p>Develop procedures for LEAs to review test results for the potential of invalid results and provide suggestions on how to follow-up on questionable results.</p>
<p>SED's document retention policy for LEAs of one year is inadequate to preserve evidence for investigative purposes.</p>	<p>Lengthen LEA document retention requirements from one to up to five years.</p>

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<b>Establish Statewide Standards and Guidelines for Teachers and Administrators</b>	
<p>No testing code of ethics exists regarding teachers and administrators' legal and ethical responsibilities administering and scoring state assessments. The absence of enforceable standards increases the opportunities for security breaches.</p>	<p>Develop and institute a legally enforceable testing code of ethics.</p>
<p>Persons who administer and grade assessments are <u>not</u> required to take an integrity oath, otherwise certify compliance with a testing code of ethics, or acknowledge potential sanctions for security breaches and other testing irregularities.</p>	<p>Require LEA personnel involved in test administration and scoring to take an integrity oath affirming that they:</p> <ul style="list-style-type: none"> <li>• Understand their test security obligations and the testing code of ethics;</li> <li>• Acknowledge potential sanctions for violations thereof;</li> <li>• Have received training; and</li> <li>• Have read relevant manuals.</li> </ul>
<p>Manuals and guidance documents do not adequately alert teachers and administrators to their ethical and legal responsibilities in administering and scoring state assessments.</p>	<p>Include in manuals and guidance documents:</p> <ul style="list-style-type: none"> <li>• Specific, context-based examples of prohibited conduct; and</li> <li>• Clear warnings as to the consequences of engaging in prohibited conduct.</li> </ul>
<p>No uniform standards exist for LEAs to consult in determining appropriate sanctions.</p> <p>SED's typical sanction for a verified allegation – namely, prohibiting the guilty party from participating in the administration and scoring of assessments – does not promote the goals of deterrence or prevention.</p>	<p>Standardize and toughen sanctions for security breaches and other testing irregularities:</p> <ul style="list-style-type: none"> <li>• Specify penalties appropriate for different categories of misconduct.</li> <li>• Encourage LEAs to enforce the consequences deemed appropriate for each occurrence</li> <li>• Recommend termination in cases involving egregious and intentional misconduct.</li> </ul>

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<b>Aggressively Oversee Local Integrity Investigations</b>	
No written policies and procedures for reporting by LEAs or enforcement and monitoring of corrective action plans.	Require investigations be conducted, completed and the results reported to TSU within an established timeframe.  When an allegation is verified, require the LEA to file a corrective action plan describing any disciplinary action and corrective action taken.
No standards exist for LEAs or district superintendents to ensure the independence and integrity of the persons who actually conduct investigations.	Designate in advance “integrity officers” at LEA level to coordinate and conduct investigations, and develop criteria to ensure their independence and competence.
SED case files often lack documentation or evidence of follow-up.  A high percentage of older cases remain open or otherwise unresolved.	Document and track through final disposition all reported allegations and prepare written summary for each verified allegation.  Review the status and resolve as appropriate all open files for allegations reported to SED over the past five years.
Insufficient attention focused on holding LEAs and BOCES district superintendent accountable for objective investigations.	Enhance accountability for compliance with state-wide test integrity standards through public reporting and adding potential sanctions in the event of systematic cheating.

<b>Increase the Frequency and Strategic Use of Data Forensics</b>	
APDA makes sporadic use of data forensics to detect and deter security breaches and other testing irregularities.	Increase frequency of audits and systematically utilize them for forensic purposes to detect and deter security breaches and other testing irregularities.  Conduct comprehensive audits at multiple levels (student, class, school, district).  Increase funding for audits. (Board of Regents 2012-13 Budget Request)
No policies, procedures, or strategic plan exists for audits.	Establish policies and procedures for the conduct of audits, the review and reporting thereof, and follow-up investigations.  Develop long-range strategic plan for increasing the number, scope and strategic purpose of audits.

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Test Integrity Policies and Procedures**

<b>Enhance Transparency at the State and Local Level</b>	
<p>There presently is no public reporting of:</p> <ul style="list-style-type: none"> <li>• APDA's activities to detect and deter security breaches and other testing irregularities;</li> <li>• Confirmed allegations; or</li> <li>• SED audits.</li> </ul>	<p>Institute annual public reporting of TSU's activities. Publish, as appropriate, the results of SED audits. Require LEAs and District Superintendents to report on test integrity issues, including, but not limited to, disclosure of confirmed allegations.</p>