



**TO:** P-12 Education Committee

**FROM:** Jhone M. Ebert 

**SUBJECT:** Proposed Amendment to §104.3 of the Commissioner's Regulations Relating to Assessments and Student Official Transcripts and Permanent Records

**DATE:** January 3, 2019

**AUTHORIZATION(S):**  

### SUMMARY

#### **Issue for Decision**

Should the Board of Regents adopt the proposed amendment to §104.3 of the Commissioner's Regulations to timely implement the provisions of Section 35 of Part CCC of Chapter 59 of the Laws of 2018?

#### **Reason(s) for Consideration**

Required by State statute (Part AA, Subpart B of Chapter 56 of the Laws of 2014 as amended by Section 35 of Part CCC of Chapter 59 of the Laws of 2018).

#### **Proposed Handling**

The proposed amendment is presented to the P-12 Education Committee for recommendation and to the Full Board for adoption as an emergency rule at the January 2019 meeting of the Board of Regents. A copy of the proposed rule and a statement of facts and circumstances justifying the emergency action are attached.

#### **Procedural History**

A Notice of Emergency Adoption and Proposed Rulemaking will be published in the State Register on January 30, 2019. Supporting materials are available upon request from the Secretary to the Board of Regents.

## **Background Information**

Education Law §305(45) and (46) were added as part of the 2014 Enacted Budget. These sections 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 further require 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. These regulatory provisions expired and were deemed repealed on December 31, 2018.

However, these provisions in the law were extended by Section 35 of Part CCC of Chapter 59 of the Laws of 2018 until December 31, 2019. Therefore, regulatory amendments are necessary to extend these provisions an additional year to timely implement the legislation.

## **Related Regents Items**

[April 2014](http://www.regents.nysed.gov/common/regents/files/413p12a3_2.pdf) ([http://www.regents.nysed.gov/common/regents/files/413p12a3\\_2.pdf](http://www.regents.nysed.gov/common/regents/files/413p12a3_2.pdf))

## **Recommendation**

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

VOTED: That §104.3 of the Regulations of the Commissioner of Education be amended, as submitted, effective January 15, 2019, 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 continue the effectiveness of Chapter Part AA, Subpart B of Chapter 56 of the Laws of 2014 as amended by Section 35 of Part CCC of Chapter 59 of the Laws of 2018.

## **Timetable for Implementation**

If adopted at the January 2019 Regents meeting, the proposed amendment will become effective as an emergency measure on January 15, 2019. Following the 60-day public comment period, it is anticipated that the proposed amendment will be presented for adoption as a permanent rule at the May 2019 Regents meeting. If adopted at the May 2019 meeting, the proposed amendment will become effective as a permanent rule on May 22, 2019. It is also anticipated that a second emergency action will be necessary at the April 2019 meeting to ensure that the emergency rule adopted at the January 2019 meeting remains continuously in effect until it can be adopted as a permanent rule.

**Attachment A**

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.

Section 104.3 of the Regulations of the Commissioner of Education is amended as follows:

During the period commencing on April 1, 2014 and expiring on [December 31, 2018] December 31, 2019:

(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.

**8 NYCRR §104.3**

STATEMENT OF FACTS AND CIRCUMSTANCES WHICH NECESSITATE  
EMERGENCY ACTION

The proposed amendment is necessary to continue the effectiveness of the Commissioner's regulations for the purpose of implementing the provisions of Education Law §305(45) and (46) as added by Part AA, Subpart B of Chapter 56 of the Laws of 2014 and as amended by Section 35 of Part CCC of Chapter 59 of the Laws of 2018.

Since the Board of Regents meets at fixed intervals, the earliest the proposed rule can be presented for regular (non-emergency) adoption, after expiration of the required 60-day public comment period provided for in the State Administrative Procedure Act (SAPA) sections 201(1) and (5), would be the May 2019 Regents meeting. Furthermore, pursuant to SAPA section 203(1), the earliest effective date of the proposed rule, if adopted at the May 2019 meeting, would be May 22, 2019, the date a Notice of Adoption would be published in the State Register,

Therefore, emergency action is necessary at the January 2019 Regents meeting for the preservation of the general welfare to timely implement the provisions of section 35 of Part CCC of Chapter 59 of the Laws of 2018.

It is anticipated that the proposed rule will be presented for adoption as a permanent rule at the May Regents meeting, which is the first scheduled meeting after expiration of the 60-day public comment period prescribed in the SAPA for State agency rule makings.

