



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

TO: Dr. John B. King, Jr., Commissioner of Education and President of the
University of the State of New York

FROM: Henry M. Greenberg, Special Investigator

SUBJECT: Review of the New York State Education Department's ("NYSED")
Processes and Procedures for Handling and Responding to Reports of
Alleged Irregularities in the Administration and Scoring of State
Assessments

DATE: March 19, 2012

INTRODUCTION

On November 14, 2011, pursuant to Education Law § 104, section 3.9 of the Rules of the Board of Regents and other applicable laws, you appointed me to serve in the position of Special Investigator to NYSED on a *pro bono* basis to the State. My charge was two-fold: *first*, conduct a complete review of NYSED's processes and procedures for handling and responding to reports of alleged improprieties involving the State's assessments; and *second*, make recommendations for your and the Board of Regents' consideration to systematically improve NYSED's policies and procedures.

In accordance with the terms of the appointment, my review included, but was not limited to, NYSED's processes and procedures for intake, review, referral, investigation, findings, response, follow-up, and State records retention policy regarding student answer papers. In this connection, I interviewed numerous members of NYSED's staff and other education officials; examined NYSED's case files, guidance materials, manuals, memorandum, 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.¹

Having concluded the investigation of this matter, what follows are my findings and recommendations.

¹ Information was reviewed from the following other states: California, Connecticut, Florida, Georgia, Illinois, Massachusetts, Michigan, Nevada, New Jersey, North Carolina, Ohio, Rhode Island, Texas, and Virginia.

FINDINGS

- I. NYSED’s Office of Assessment Policy, Development and Administration (“APDA”)² cannot adequately handle receiving, reviewing and following-up on reports of alleged irregularities (“allegations”)³ in the administration and scoring of the State’s student assessments.⁴
- A. In general, APDA does not investigate testing irregularities, even in cases involving serious allegations. Instead, APDA relies on local education agencies (“LEAs”) and District Superintendents from the State’s 37 Boards of Cooperative Educational Services (“BOCES”)⁵ to

² Approximately 68 people work in APDA, 37 of whom are assigned to the Bureau of Test Development; 27 to the Bureau of Test Administration and Communication; and four that perform research related functions.

³ As used internally by APDA’s staff, “allegation” is a term of art covering situations in which an adult has engaged in purposeful wrongdoing in storing, administering or scoring an assessment. Examples of allegations include: a teacher reviewing a test in advance with students; a teacher completing sections of an answer sheet for a student; a teacher changing a student’s responses; a teacher providing improper assistance during test administration; a teacher inflating grades by not using applicable rubric or proper procedures; an administrator encouraging teachers/proctors to offer assistance to students; an administrator authorizing extended time to take an exam inappropriately; an administrator providing review to teachers using test materials; an administrator pressuring teachers to pass more students; and an administrator directing teachers to inflate scores.

An “allegation” is to be distinguished from a “misadministration,” which covers situations where a student’s score on an assessment may be nullified or adjusted because the assessment was improperly administered. In most cases, a misadministration is accidental (e.g., a proctor fails to realize that a student was entitled to extra time when taking an assessment).

⁴ APDA coordinates, develops and implements the New York State Testing Program, which is comprised of the following assessments: Grades 3-8 ELA and Mathematics Tests; Grade 4 and Grade 8 Science Tests; Regents Examinations; Regents Competency Tests; New York State Alternate Assessments (“NYSAA”); Language Assessment Battery-Review (“LAB-R”); and New York State English as a Second Language Achievement Test (“NYSESLAT”).

⁵ A District Superintendent is the chief executive officer of a BOCES and the general supervising officer of the supervisory district that comprises the BOCES. The District Superintendent is responsible for both the BOCES and its component districts, and also performs duties assigned by the Commissioner of Education,

conduct investigations (hereinafter referred to as “local integrity investigations”) and report the results to APDA.

- B. However, personnel in APDA lack the requisite training, experience and resources to perform their current test-integrity responsibilities.⁶
- C. APDA excessively disburses its current test integrity responsibilities among more than 20 employees, none of whom devote more than a fraction of their time to this work.⁷
- D. Decision-making is often made on an inconsistent basis, without the benefit of written policies and procedures and quality control mechanisms.
- E. APDA’s mission and ethos is ill-suited to perform a policing and investigative function.⁸

serving as NYSED’s field representative in the supervisory district. *See* N.Y. Educ. Law § 2215(4) (requiring district superintendent “[t]o make such investigations and to make such reports to the commissioner of education upon any matter or act as said commissioner shall from time to time request”). There are 37 BOCES, incorporating all but nine of the State’s 721 school districts.

⁶ No one in APDA assigned to matters involving alleged malfeasance in the administration and/or scoring of State assessments has prior law enforcement training or experience.

⁷ No one in APDA devotes more than 20% of his or her time to the detection and investigation of malfeasance in the administration and/or scoring of State assessments. The average percentage of time spent by a person assigned to work on such matters is approximately 10%.

⁸ In fact, the description of APDA that appears on NYSED’s website gives no indication that the office performs any policing or investigative functions. *See* N.Y.S. Education Dept., *About APDA*, <http://www.p12.nysed.gov/apda/about-apda.html> (last visited on Feb. 26, 2012) (“In carrying out its responsibilities, APDA develops and administers tests that are aligned with the New York State Learning Standards and Core Curriculum, are consistent with State and federal mandates, are statistically and psychometrically sound, and yield valuable information that enables the State Education Department to hold schools accountable for the education of all students. The Office provides guidance on the NYSTP to school districts and the public, and advises the Board of Regents and the Commissioner of Education as they shape New York State’s testing policies and procedures”).

- II. APDA's intake and data gathering systems are inadequate.
- A. APDA's use of a paper-based primary portal (fax machine) for allegations results in the underreporting and underestimation of information to NYSED.⁹
- B. Under existing regulations — and guidance documents — only principals are expressly required to report testing irregularities.¹⁰

⁹ APDA also receives allegations directly through e-mail (emscassessinfo@mail.nyNYSED.gov) and telephone calls, and indirectly through NYSED's fraud, waste and abuse reporting mechanisms. *See generally*, N.Y.S. Education Dept., *Report, Fraud, Waste, and Abuse*, <http://www.oms.nysed.gov/oas/fraud/home.html> (last visited on Feb. 26, 2012).

¹⁰ The one regulation that expressly requires a principal to advise NYSED of "fraud" in connection with an assessment makes reference only to fraud committed by a student. *See* 8 N.Y.C.R.R. § 104 ("If, in the judgment of the principal responsible for administration of an examination under the authority of the Regents, upon the basis of evidence deemed by him to be sufficient, a student has been found guilty of having committed or attempted to commit fraud in the examination, the principal shall be authorized to cancel the examination and to exclude this student from any subsequent Regents examination until such time as the student has demonstrated by exemplary conduct and citizenship, to the satisfaction of the principal, that the student is entitled to restoration of this privilege. . . . The principal shall report promptly to the commissioner the name of each student penalized under this regulation, together with a brief description of circumstances.") (emphasis added). *See also* N.Y.S. Education Dept., *School Administrator's Manual Secondary Level Examinations* 13 (2012 ed.) (stating that principals must report administration and scoring irregularities to APDA), *accessible at* <http://www.p12.nysed.gov/apda/sam/secondary/hs-sam-12.pdf> (last visited on Feb. 26, 2012) [hereinafter cited as *School Administrator's Manual*]; N.Y.S. Education Dept., *New York State Testing Program, Grades 3-8 Mathematics Test: School Administrator's Manual* 33 (2011 ed.) (stating that principals must report security breaches and testing irregularities), *accessible at* <http://www.p12.nysed.gov/apda/sam/math/mathei-sam-11.pdf> (last visited on Feb. 26, 2012).

By regulation, Superintendents must report conduct by a teacher that raises a reasonable question of "moral character." *See* 8 N.Y.C.R.R. § 83.1 ("Any information indicating that an individual holding a teaching certificate . . . has committed an act which raises a reasonable question as to the individual's moral character, shall be referred by the chief school administrator having knowledge thereof to the professional conduct officer of the department."). Each year, NYSED receives approximately 175-200 complaints from Superintendents raising questions about the moral character of teachers (e.g., sexual misconduct, alcohol and drug

- C. Reliance upon principals as the exclusive audience solicited for reporting allegations fails to capture all allegations made by teachers, administrative staff, other school personnel, students and parents.
 - D. No written policies and procedures exist for the intake and tracking of allegations.
 - E. Staff performing the threshold review of allegations lack the requisite training and/or capacity to effectively do so in all cases.
 - F. APDA’s primary tracking system for allegations is paper-based and ineffective.
 - G. APDA’s electronic database for allegations is incomplete and unreliable. Important information is not collected or is inadequately analyzed.¹¹
 - H. The existing database does not produce summary reports that make possible analysis of test security trends over time.
- III. Insufficient support and assistance is provided to LEAs and BOCES District Superintendents tasked with conducting investigations.
- A. APDA provides no relevant training for LEAs and BOCES District Superintendents.
 - B. No established policies and procedures exist addressing:
 1. the manner in which local integrity investigations should be conducted; or
 2. the independence and integrity of the persons who actually conduct them.

abuse, criminal activity). Historically, a small fraction of these complaints involve allegations of security breaches or testing irregularities on State assessments. In fact, from 2001-2011, NYSED received from Superintendents only approximately 110 test fraud complaints.

¹¹ In addition to the allegations database, APDA and NYSED’s Office of Information and Reporting Systems jointly maintain an electronic database that collects information with respect to some, but not all, State assessments. The data now collected in these two databases is insufficient for NYSED to be able to measure or analyze test security trends over time.

- C. NYSED’s document retention policy for LEAs of one year¹² is inadequate to preserve evidence for investigative purposes.
- IV. APDA’s oversight of local integrity investigations is passive and inconsistent.
- A. No action is taken to hold LEAs and BOCES District Superintendents accountable to conduct vigorous and objective investigations.
 - B. No standards exist for LEAs or BOCES District Superintendents to ensure the independence and integrity of the persons who actually conduct local integrity investigations.
 - C. No written policies and procedures exist for the referral, review and disposition of allegations.
 - D. Case files often lack documentation or evidence of follow-up.
 - E. A high percentage of older cases remain open or otherwise unresolved.
- V. The absence of specific and enforceable standards for teachers and test administrators creates an environment in which security breaches and other testing irregularities are more likely to occur.
- A. No testing code of ethics (the “Code of Ethics”) exists regarding teachers and administrators’ legal and ethical responsibilities administering and scoring state assessments.¹³
 - B. Persons administering and scoring assessments are not required to take an integrity oath, otherwise certify compliance with a Testing Code of

¹² See N.Y.C.R.R. § 185.12 (Appendix H, Schedule ED-1).

¹³ In 2002, the State Professional Standards and Practices Board for Teaching issued the New York State Code of Ethics for Educators (“the Code”), *accessible at* <http://www.highered.nysed.gov/tcert/reteachers/codeofethics.html#statement> (last visited on Feb. 26, 2012). The Code, however, does not purport to address the legal and ethical responsibilities of teachers and administrators regarding the administration and scoring of State assessments. Also, the provisions of the Code cannot be used as a basis for discipline by any employer or by NYSED as a basis for a proceeding under Part 83 of the Commissioner’s regulations, nor can they serve as a basis for decisions pertaining to certification or employment in New York State.

Ethics, or acknowledge potential sanctions for security breaches and other testing irregularities.¹⁴

- C. Manuals and guidance documents do not adequately alert teachers and administrators to their ethical and legal responsibilities in administering and scoring state assessments.¹⁵
- D. The dearth of training, policy, procedures, and standards is especially problematic for LEAs, given their potential lack of independence when called upon to conduct internal investigations.¹⁶
- E. NYSED does not aggressively exercise its power and authority to conduct moral character investigations pursuant to Part 83 of the Commissioner’s Regulations.¹⁷

¹⁴ The “Deputy and Proctor Certificate” and “Exam Scoring Certificate” — which NYSED currently uses — fail to effectively communicate critical aspects of test security, in that they: (1) merely require a declaration of belief in the correctness of certain statements, which do not adequately enumerate or describe unethical conduct; (2) fail to require an affirmation that signatories have read relevant manuals and understand test security obligations and penalties for violations; and (3) fail to require an affirmation that signatories have, in fact, complied with test security requirements.

¹⁵ Current guidance documents tend to couch such warnings in legalistic language. *See* School Administrator’s Manual, 12 (“Teachers and administrators who engage in inappropriate conduct with respect to administering and scoring State exams may be subject to disciplinary actions in accordance with Sections 3020 and 3020-a of Education Law or to action against their certification pursuant to Part 83 of the Regulations of the Commissioner of Education.”; “Section 225 of the Education Law makes fraud in exams a misdemeanor, whether perpetrated by a student, by a teacher or administrator, or by any other person.”).

¹⁶ As noted, APDA’s typical response to a plausible allegation is to request an investigation be conducted either by an LEA or a BOCES District Superintendent. To the extent such investigations are conducted by personnel within LEAs, they arguably, in the words of one commentator, “lack strong incentives for vigorously and objectively collecting information in the course of the . . . investigations.” G. J. Cizek, *Final Report: Review and Recommendations Related to Test Security* 31 (July 2005), *accessible at* http://www.tea.state.tx.us/index3.aspx?id=3206&menu_id3=793 (last visited on Feb. 26, 2012) [hereinafter cited as Cizek, *Final Report*]. It may also be the case “that the judged severity of cases and the amount of information eventually wending its way to officials at . . . [NYSED] is to some degree underestimated or underreported.” *Id.*

- F. No uniform standards exist for LEAs to consult in determining appropriate sanctions.
 - G. NYSED's typical sanction for a verified allegation — namely, prohibiting the guilty party from participating in the administration and scoring of assessments for a period of time — does not promote the goals of deterrence or prevention.
- VI. APDA makes sporadic and ineffective use of data forensics to detect and deter security breaches and other testing irregularities.
- A. The present deployment of monitoring visits,¹⁸ scoring audits and data forensic methods (collectively, “audits”):¹⁹
 - 1. does not address the full range of test integrity issues presented by high-stakes assessments;

¹⁷ See 8 N.Y.C.R.R. §§ 83.1-83.6. Notwithstanding that APDA verified well over 200 allegations from 2006-20011, only rarely and passively has it referred such cases to NYSED's Office of School Personnel Review and Accountability (“OSPRA”), which investigates allegations concerning the moral character of individuals who hold or who are applicants for New York State teaching certificates. Complaints received by OSPRA are reviewed pursuant to Part 83 of the Commissioner's regulations to determine the appropriate action. See 8 N.Y.C.R.R. §§ 83.1-83.6.

¹⁸ In 2011, NYSED conducted approximately 59 monitoring visits of schools to assess test security procedures (e.g., a school's proposed secure storage space) for the administration of State assessments. The number of monitoring visits in 2011 declined from the preceding year, when NYSED conducted approximately 77 such visits.

¹⁹ Although APDA has previously used erasure analysis to enhance test security on Regents examinations, it has not done so in a systematic manner or for the purpose of identifying testing improprieties. See Memorandum from Valerie Grey and Ken Slentz to P-12 Education Committee, dated Oct. 13, 2011, at 2-3, *accessible at* <http://www.regents.nysed.gov/meetings/2011Meetings/October2011/1011p12a5.pdf> (last visited on Feb. 26, 2012); Sharon Otterman, *State Says It Analyzed Test Erasure for Cheating; 62 Schools Proved Suspect*, N.Y. Times, Sept. 23, 2011, *accessible at* <http://www.nytimes.com/2011/09/24/nyregion/in-reversal-new-york-state-says-it-used-erasure-analysis-to-detect-cheating.html?pagewanted=all> (last visited on Feb. 26, 2012). Likewise, APDA has made only sporadic use of spike cluster analysis, audit rescoring, and other methods for reviewing test papers.

2. nor does it adequately detect and deter unethical practices.
 - B. No strategic plans, policies or procedures exists for audits.
- VII. APDA’s test integrity efforts are largely invisible to key stakeholders and the public, in that there is no public reporting of:
- A. APDA’s activities to detect and deter security breaches and other testing irregularities;
 - B. confirmed allegations; or
 - C. NYSED audits.

RECOMMENDATIONS

- I. Create a new Test Security Unit (“TSU”) and provide sufficient resources to detect and deter security breaches and other testing irregularities in state assessments.
 - A. TSU should be staffed with at least 5 to 10 full-time employees assigned exclusively to test-integrity work.
 - B. Identify the necessary skills and training for all personnel assigned to TSU.²⁰
 - C. Establish written policies and procedures for the operations of TSU addressing, among other subjects:
 1. intake, referral, review, tracking and disposition of allegations; and
 2. the investigation and prosecution of moral character cases.
 - D. Institute quality control mechanisms to ensure compliance with established policies and procedures.

²⁰ The tasks for which TSU personnel would be responsible are both complex and sensitive. Accordingly, staff assigned to TSU should have appropriate qualifications in the conduct of investigations and administrative prosecutions, “testing and analytical methods, training in test security, and protection of confidentiality and anonymity, or some combination of these or other prerequisite skills identified by . . . [NYSED] as relevant to the position.” Cizek, *Final Report*, 36.

- E. In cases involving serious allegations, TSU should conduct independent moral character investigations and prosecutions pursuant to Part 83 of the Commissioner’s regulations, rather than rely on LEAs or BOCES District Superintendents.
 - F. Mindful of current and future technological developments, conduct a thorough review of existing security policies and procedures for state assessments and implement enhancements of security protocols.
- II. Institute comprehensive, state-of-the-art intake and data-gathering systems that facilitate subsequent analyses.
- A. Standardize incident reporting.
 - B. Create a secure online incident reporting process, in addition to existing reporting portals.²¹
 - C. Mandate reporting of allegations to NYSED by any person who learns of any security breach or other testing irregularity²² and sanction those who fail to comply.²³

²¹ See, e.g., the Texas Education Agency’s online incident reporting process for testing irregularities and disciplinary actions taken against students, which can be accessed at http://www.tea.state.tx.us/index3.aspx?id=3206&menu_id3=793 (last visited on Feb. 26, 2012); and the Virginia Department of Education’s Testing Irregularity Web Application system, which can be accessed at http://www.doe.virginia.gov/testing/test_administration/index.shtml (last visited on Feb. 26, 2012).

²² See, e.g., Virginia’s Testing Code of Ethics, which provides, in relevant part, as follows:

Any person who learns of any breach of security, loss of materials, failure to account for materials, or any other deviation from required security procedures shall immediately report that information to the principal, building level test coordinator, school system test coordinator, and state level test coordinator.

16 N.C. Admin. Code § 6D.0306(b)(6). See also Illinois State Board of Education, *Professional Testing Practices for Educators, Illinois Standards Achievement Test 8* (Spring 2012) (“School or district staff members **must immediately** report all incidents of cheating or other testing irregularities by students or staff to a Student Assessment Division staff member”) (emphasis in original), accessible at http://www.isbe.net/assessment/pdfs/2012/isat/prof_test_prac_2012.pdf (last visited on Feb. 26, 2012); Nevada Department of Education, *Procedures for the Nevada*

- D. Protect from retribution persons who report security breaches and other testing irregularities.
- E. Transition from paper to electronic tracking system for allegations.
- F. Collect in database all relevant information regarding allegations and misadministrations, including, but not limited to:
 - 1. Overall case disposition by type for each (annual) reporting period;
 - 2. average time from initial report to final case disposition (by case type); and
 - 3. characteristics of effective documentation and corrective action plans.²⁴
- G. Document and track all reports of allegations and misadministrations from intake through final disposition.
- H. Prepare a written summary for each verified allegation.²⁵

Proficiency Examination Program 12 (2011-2012) (stating that under Nev. Rev. Stat. § 389.628(1) a school official who has reason to believe that a violation of the state or district test security plan has occurred must immediately report the incident to the district board of trustees), *accessible at* http://www.doe.nv.gov/Assessment/NPEP/NPEP_Procedures_Manual.pdf (last visited on Feb. 26, 2012).

²³ In Texas, it's a violation of state law to fail to report to the appropriate authority that an individual has engaged in conduct that violates the security or confidentiality of an assessment and may result in sanctions. 19 Tex. Admin. Code §§ 101.65(d)(7), 249.15.

²⁴ Cizek, *Final Report*, 36.

²⁵ In Nevada, such procedures are imposed by statute on the State Education Department. Nev. Rev. Stat. § 398.648. For example, the State Education Department is statutorily required to prepare a written summary in serious cases. *Id.* § 398.648(2). The written summary must include, without limitation: (a) an evaluation of whether applicable test security procedures were followed; (b) the corrective action, if any, taken in response to the testing irregularity; (c) an evaluation of whether the corrective action achieved the desired result; and (d) the current status and the outcome, if any, of an investigation related to the irregularity. *Id.*

- I. Utilize software and other technologies that maximize capacity to analyze data and produce summary reports.
- III. Support LEAs and BOCES District Superintendents tasked with conducting investigations.
- A. Provide training for LEAs and BOCES District Superintendents through webinars, written guidance and other means.²⁶
 - B. Create a webpage dedicated to testing irregularities.²⁷
 - C. Develop model policies and procedures for local integrity investigations,²⁸ or, at a minimum, identify key elements that LEAs and BOCES District Superintendents should consider when developing their own policies and procedures.
 - D. 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.²⁹
 - E. Lengthen LEA document retention requirement from one to up to five years.³⁰

²⁶ See, e.g., the Texas Education Department’s “Tips for Conducting Thorough Investigations,” which is accessible at <http://www.tea.state.tx.us/student.assessment/security/> (last visited Feb. 26, 2012).

²⁷ See, e.g., the Texas Education Agency’s “Test Security” webpage, which can be accessed at http://www.tea.state.tx.us/index3.aspx?id=3206&menu_id3=793 (last visited on Jan. 5, 2012).

²⁸ By regulation, Ohio requires LEAs to establish written procedures “for investigating any alleged violation of an assessment security provision or any alleged unethical testing practice” Ohio Admin. Code § 3301-13-05(H)(5).

²⁹ See Cizek, *Final Report*, 31 (recommending that Texas Education Agency “develop and disseminate procedures for local units regarding methods or approaches that can be used by campus and district educators to review local test results for the potential of invalid results and provide suggestions on how to follow-up on questionable results”).

³⁰ Texas has established such a requirement by regulation. See 19 Tex. Admin. Code § 101.3005(d) (requiring “school districts to maintain records related to the security of assessment instruments for a minimum of five years”).

- IV. Aggressively oversee local integrity investigations.
- A. Establish written policies and procedures for the referral, review and disposition of allegations.
 - B. Require LEAs and BOCES District Superintendents to designate in advance “Integrity Officers” to coordinate and conduct investigations, and develop criteria to ensure their independence and competence.³¹
 - C. Require local integrity investigations be conducted, completed and the results thereof reported to TSU within an established timeframe.³²
 - D. Require the LEA to file a corrective action plan when an allegation is verified that describes any disciplinary and/or corrective action taken.³³
 - E. Hold LEAs accountable for compliance with state-wide test integrity standards:

³¹ See generally, Michigan Dept. of Education, *Assessment Integrity Guide: Michigan standards for professional and ethical conduct in assessment administration and reporting* 27 (Sept. 2009) (stating that the Office of Education Assessment and Accountability within the Michigan Department of Education is required to “assign an independent investigator to conduct fact finding and provide a report” in cases involving severe testing irregularities), accessible at http://www.michigan.gov/documents/mde/Assessment_Integrity_Guide_291950_7.pdf (last visited on Feb. 26, 2012).

³² The Illinois State Board of Education, for example, requires the results of Local Integrity Investigations to be completed within two weeks, unless other arrangements are made. See Illinois State Board of Education, *Professional Testing Practices for Educators, Illinois Standards Achievement Test 8* (Spring 2012), accessible at http://www.isbe.net/assessment/pdfs/2012/isat/prof_test_prac_2012.pdf (last visited on Feb. 26, 2012).

³³ See, e.g., Nevada Department of Education, *Procedures for the Nevada Proficiency Examination Program* 15 (2011-2012), accessible at http://www.doe.nv.gov/Assessment/NPEP/NPEP_Procedures_Manual.pdf (last visited on Feb. 26, 2012). The Texas Education Agency has created a Corrective Action Plan template that requires a description of (a) the incident; (b) any local disciplinary actions taken against educators as a result of the local school district’s investigation; and (c) the corrective action taken. See <http://www.tea.state.tx.us/student.assessment/security/incidents/> (last visited on Feb. 26, 2012).

1. through public reporting of relevant test integrity issues; and
 2. by adding to the list of potential sanctions in the event of systemic cheating.³⁴
- F. Ascertain the status and resolve as appropriate all open files for allegations reported to NYSED over the past five years.³⁵
- V. Establish statewide standards and guidelines for educators and test administrators.
- A. Promulgate a legally enforceable testing Code of Ethics.³⁶
 - B. Include in manuals and guidance documents:
 1. specific, context-based examples of prohibited conduct;³⁷ and

³⁴ Presently, the primary means of addressing cheating on State assessments is to (1) invalidate scores when students cheat; and (2) subject teachers who engage in inappropriate conduct to (a) local disciplinary action in accordance with Education Law §§ 3020 and 3020-a, or (b) action against their certification pursuant to Part 83 of the Regulations of the Commissioner of Education. NYSED should conduct a review of its existing regulatory authority to determine how it can add to the list of sanctions by authorizing action against LEAs in the event of systemic cheating. In such circumstances, at least one state has adopted rules that permit it to lower a school district's accreditation rating. *See* 19 Tex. Admin. Code ch. 97, Planning and Accreditation, Subchapter EE, Accreditation, Status, Standards, and Sanctions; Texas Education Agency.

³⁵ According to APDA's records, well over 200 files remain open involving allegations of testing irregularities covering the years 2006 through 2011.

³⁶ For example, the North Carolina Department of Education has promulgated a *Testing Code of Ethics* (GCS-A-010 [16 N.C. Admin. Code § 6D .0306]), *accessible at* <http://www.dpi.state.nc.us/docs/accountability/testing/policies/testcode080100.pdf> (last visited on Feb. 26, 2012)), that addresses appropriate professional practices for central office and school administrators, test coordinators, teachers (test administrators), and proctors in the areas of securing tests; administering tests; and scoring, reporting, and interpreting test results. *See also* National Council on Measurement in Education, *Code of Professional Responsibilities in Educational Measurement* (1995). Some states, such as Florida, have enacted statutes and regulations that prescribe standards of conduct for persons involved in the administration, handling, scoring, and reporting of a statewide assessment. *E.g.*, Florida Stat. § 1008.24; Florida State Board of Education Rule 6A-10.042.

2. clear and unequivocal warnings as to the consequences of engaging in prohibited conduct.³⁸
- C. Require LEA personnel involved in test administration and scoring to certify and affirm that they:
1. understand their test security obligations, including the provisions of the testing code of ethics;
 2. acknowledge potential sanctions for violations thereof;
 3. have received training; and,
 4. have read relevant manuals.³⁹
- D. Standardize and toughen sanctions for security breaches and other testing irregularities.

³⁷ See, e.g., Connecticut State Board of Education, *Connecticut Mastery Test Fourth Generation 2* (Test Coordinator’s Manual, 2011) (listing acts that constitute breaches in test security), *accessible at* http://www.csde.state.ct.us/public/cedar/assessment/cmt/resources/misc_cmt/Test%20Coordinators%20Manual%202011.pdf (last visited on Feb. 26, 2012) [hereinafter cited as *Connecticut Mastery Test*]; Georgia Department of Education, *Georgia End-of-Course Tests: Test Coordinators Manual 1* (2011-2012) (same).

³⁸ See, e.g., *Connecticut Mastery Test*, 1 (“Violation of test security is a serious matter with far-reaching consequences. . . . A breach of test security may be dealt with as a violation of the Code of Professional Responsibility for Teachers, as well as a violation of other pertinent state and federal law and regulation. The Connecticut State Department of Education will investigate all such matters and pursue appropriate follow-up action. Any person found to have intentionally breached the security of the test system may be subject to sanctions including, but not limited to, disciplinary action by a local board of education, the revocation of Connecticut teaching certification by the State Board of Education (see Section 10-145b(m) of the Connecticut General Statutes), and civil liability pursuant to federal copyright law.”).

³⁹ See, e.g., the Texas Education Agency’s “Oaths of Test Security and Confidentiality,” which are *accessible at* http://www.tea.state.tx.us/index3.aspx?id=3206&menu_id3=793 (last visited on Jan. 5, 2012).

1. Specify penalties appropriate for different categories of misconduct.⁴⁰
 2. Encourage LEAs to enforce the consequences deemed appropriate for each occurrence.
 3. Recommend termination in cases involving egregious and intentional misconduct.⁴¹
- VI. Increase frequency of audits and systematically utilize them for forensic purposes to detect and deter security breaches and other testing irregularities.
- A. Develop long-range strategic plan for increasing the number, scope and strategic purpose of audits.
 - B. Establish policies and procedures for the conduct of audits, the review and reporting thereof, and follow-up investigations.
 - C. Conduct comprehensive audits at multiple levels (student, class, school and district).
 - D. Increase funding for audits.
- VII. Increase transparency at the State and local level regarding test integrity issues.
- A. Institute annual public reporting of TSU's activities.⁴²

⁴⁰ Cizek, *Final Report*, 40-41.

⁴¹ *Id.* at 39.

⁴² Cizek, *Final Report*, 31. By statute, the Nevada State Education Department (“the Department”) is required to prepare a written report for each school year that, among other things, (a) summarizes each testing irregularity reported to the Department and each investigation it conducted; (b) the current status of each testing irregularity that was reported for a preceding school year which had not been resolved at the time that the preceding report was filed; (c) the current status and the outcome, if any, of an investigation conducted by the Department; and (d) an analysis of the irregularities and recommendations, if any, to improve the security of the examinations and the consistency of testing administration. Nev. Rev. Stat. § 389.648(3).

With respect to TSU, public reporting of its actions would not only facilitate its work, but also demonstrate a commitment to effective prevention and monitoring

- B. Publish, as appropriate, results of NYSED audits.⁴³
- C. Require LEAs and BOCES District Superintendents to submit reports to NYSED and local boards of education that address relevant test integrity issues, including, but not limited to, disclosure of confirmed allegations.

of, and response to, inappropriate testing activities. It would further deter such activities.

⁴³ See Cizek, *Final Report*, 34 (noting that a deterrent effect may result from the mere communication of statistical methods of detecting inappropriate test behavior).