



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: Ken Wagner

SUBJECT: Proposed amendment of §§100.3, 151-1.2 and 151-1.3 of the Commissioner's Regulations, relating to Traditional Standardized Tests in Grades Pre-K through 2

DATE: July 2, 2014

AUTHORIZATION(S):

SUMMARY

Issue for Decision (Consent Agenda)

Should the Regents approve as a permanent rule the proposed amendment of sections 100.3, 151-1.2 and 151-1.3 of the Regulations of the Commissioner of Education, to implement Chapter 56 of the Laws of 2014 by prohibiting the administration of traditional standardized tests in prekindergarten programs and grades kindergarten through two?

Reason(s) for Consideration

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

Proposed Handling

The proposed amendment will be presented to the Full Board at the July Regents meeting for adoption as a permanent rule. In addition, a second emergency adoption is necessary to ensure the emergency rule adopted at the April Regents meeting remains continuously in effect until the effective date of its adoption as a permanent rule. A statement of the facts and circumstances which necessitate emergency action is attached.

Procedural History

The proposed amendment was adopted as an emergency rule at the April 2014 Regents meeting, effective April 29, 2014. A Notice of Emergency Adoption and Proposed Rule Making was published in the State Register on May 14, 2014. A copy of the proposed amendment and an Assessment of Public Comment are attached. Supporting materials are available upon request from the Secretary to the Board of Regents.

Background Information

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 A of Chapter 56 of the Laws of 2014, which became effective on April 1, 2014, adds a new subdivision (44) to Education Law section 305, and amends Education Law section 3602-e(15), to direct the Commissioner to prohibit the administration of traditional standardized tests, as defined in regulations issued by the Commissioner, in prekindergarten programs (including Universal Prekindergarten programs), and grades kindergarten through two.

Consistent with Chapter 56 of the Laws of 2014, the proposed amendment prohibits the administration of traditional standardized tests in prekindergarten programs (including Universal Prekindergarten programs), and kindergarten through two.

A “traditional standardized test” is defined to mean “a systematic method of gathering information from objectively scored items that allow the test taker to select one or more of the given options or choices as their response. Examples include multiple-choice, true-false, and matching items. Traditional standardized tests are those that require the student (and not the examiner/assessor) to directly use a “bubble” answer sheet. Traditional standardized tests do not include performance assessments or assessments in which students perform real-world tasks that demonstrate application of knowledge and skills; assessments that are otherwise required to be administered by federal law; and/or assessments used for diagnostic or formative purposes, including but not limited to assessments used for diagnostic screening required by Education Law §3208(5).” This definition mirrors the definition of “traditional standardized assessment” in section 30-2.2(v), relating to Annual Professional Performance Review plans.

Recommendation

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

VOTED: That subdivision (a) and paragraph (2) of subdivision (b) of section 100.3, section 151-1.2 and subdivision (b) of section 151-1.3 of the Regulations of the

Commissioner of Education be amended, as submitted, effective July 30, 2014, and it is further

VOTED: That subdivision (a) and paragraph (2) of subdivision (b) of section 100.3, section 151-1.2 and subdivision (b) of section 151-1.3 of the Regulations of the Commissioner of Education be amended, as submitted, effective July 28, 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 in order to ensure that the emergency rule adopted at the April 2014 Regents meeting remains continuously in effect until the effective date of the rule's permanent adoption.

Timetable for Implementation

The proposed amendment was adopted as an emergency rule at the April 28-29, 2014 Regents meeting, effective April 29, 2014 and will expire on July 27, 2014. If adopted at the July Regents meeting, the permanent rule will take effect on July 30, 2014 and the emergency rule will take effect on July 28, 2014.

8 NYCRR §§100.3, 151-1.2 & 151-1.3

ASSESSMENT OF PUBLIC COMMENT

Since publication of a Notice of Emergency Adoption and Proposed Rule Making in the State Register on May 14, 2014, the State Education Department received the following comment.

1. COMMENT:

Extending the applicability of the proposed rule to charter schools unlawfully conflicts with the New York Education Law and threatens charter schools' ability to make decisions regarding their own educational programming.

DEPARTMENT RESPONSE:

The regulatory language does not address charter schools directly—it imposes the requirements on school districts and registered nonpublic schools. However, Education Law §2854(1)(b) states that “a charter school shall meet the same health and safety, civil rights, and student assessment requirements applicable to other public schools . . . [emphasis supplied].”

The proposed rule is necessary to conform the Commissioner's Regulations to Subpart A of Part AA of Chapter 56 of the Laws of 2014, which became effective April 1, 2014, and which adds a new subdivision (44) to Education Law section 305, and amends Education Law section 3602-e(15) to direct the Commissioner to prohibit the administration of traditional standardized tests, as defined in regulations issued by the Commissioner, in prekindergarten programs (including Universal Prekindergarten programs), and in grades kindergarten through second grade.

Consistent with the statute, the proposed rule prohibits the administration of traditional standardized tests in prekindergarten programs (including Universal Prekindergarten programs), and in grades kindergarten through two, and accordingly is “a student assessment requirement applicable to other public schools” and as such the proposed rule is also applicable to charter schools pursuant to Education Law §2854(1)(b).

2. COMMENT:

The definition of “traditional standardized test” is ambiguous and overbroad. First, it is not clear how standardized tests are differentiated from “performance assessments,” which are expressly permitted under the proposed rule. Second, this definition is unnecessarily overbroad, and will have the detrimental effect of limiting charter schools' flexibility and autonomy regarding internal assessments used to identify learning gaps in student achievement. SED should revise the proposed rule to clarify that the definition of “traditional standardized test” is limited to the annual New York State math and English language arts assessments.

DEPARTMENT RESPONSE:

The proposed rule is necessary to conform the Commissioner’s Regulations to Subpart A of Part AA of Chapter 56 of the Laws of 2014, which became effective April 1, 2014, and which adds a new subdivision (44) to Education Law section 305, and amends Education Law section 3602-e(15) to direct the Commissioner to prohibit the administration of traditional standardized tests, as defined in regulations issued by the Commissioner, in prekindergarten programs (including Universal Prekindergarten programs), and in grades kindergarten through second grade.

The Department does not believe the definition of “traditional standardized tests” in the regulation is overly broad. On the contrary, the same definition can be found in section 30-2.2 of the Rules of the Board of Regents, which relates to Annual Professional Performance Reviews of teachers and building principals pursuant to Education Law §3012-c, and is needed to provide a consistent, uniform definition that meets statutory requirements.

Moreover, Subpart A of Part AA of Chapter 56 of the Laws of 2014 specifically exempts “assessments in which students perform real-world tasks that demonstrate application of knowledge and skills” from the definition of traditional standardized assessments. Therefore, the exclusion of performance assessments in the regulation from the definition of traditional standardized assessment is consistent with the statute

AMENDMENT OF THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to Education Law sections 101, 207, 208, 209, 210, 215, 305, 308, 309, 3204 and 3602-e and Part AA of Subpart A of Chapter 56 of the Laws of 2014

1. Subdivision (a) of section 100.3 of the Regulations of the Commissioner of Education is amended, effective July 30, 2014, as follows:

(a) Prekindergarten and kindergarten programs operated by public schools and voluntarily registered nonpublic schools.

(1) . . .

(2) . . .

(3) . . .

(4) . . .

(5) Prohibition on administration of traditional standardized tests.

(i) For purposes of this subdivision, "traditional standardized test" shall mean a systematic method of gathering information from objectively scored items that allow the test taker to select one or more of the given options or choices as their response. Examples include multiple-choice, true-false, and matching items. Traditional standardized tests are those that require the student (and not the examiner/assessor) to directly use a "bubble" answer sheet. Traditional standardized tests do not include performance assessments or assessments in which students perform real-world tasks that demonstrate application of knowledge and skills; assessments that are otherwise required to be administered by federal law; and/or assessments used for diagnostic or formative purposes, including but not limited to assessments used for diagnostic screening required by Education Law §3208(5).

(ii) Notwithstanding the provisions of this subdivision, no school district or voluntarily registered nonpublic school shall administer traditional standardized tests in pre-kindergarten and kindergarten programs; provided that nothing herein shall prohibit assessments in which students perform real-world tasks that demonstrate application of knowledge and skills or assessments that are otherwise required to be administered by federal law.

2. Paragraph (2) of subdivision (b) of section 100.3 of the Regulations of the Commissioner of Education is amended, effective July 30, 2014, as follows:

(2) Required assessments.

(i) Except as otherwise provided in subparagraphs (ii), [and] (iii) and (v) 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) . . .

(b) . . .

(ii) . . .

(iii) . . .

(iv) . . .

(v) Prohibition on administration of traditional standardized tests.

(a) For purposes of this subdivision, "traditional standardized test" shall mean a systematic method of gathering information from objectively scored items that allow the test taker to select one or more of the given options or choices as their response. Examples include multiple-choice, true-false, and matching items. Traditional standardized tests are those that require the student (and not the examiner/assessor) to directly use a "bubble"

answer sheet. Traditional standardized tests do not include performance assessments or assessments in which students perform real-world tasks that demonstrate application of knowledge and skills; assessments that are otherwise required to be administered by federal law; and/or assessments used for diagnostic or formative purposes, including but not limited to assessments used for diagnostic screening required by Education Law §3208(5).

(b) Notwithstanding the provisions of this subdivision, no school district or voluntarily registered nonpublic school shall administer traditional standardized tests in grades one and two; provided that nothing herein shall prohibit assessments in which students perform real-world tasks that demonstrate application of knowledge and skills or assessments that are otherwise required to be administered by federal law.

3. Section 151-1.2 of the Regulations of the Commissioner of Education is amended, effective July 30, 2014, as follows:

§151-1.2 Definitions.

As used in this Subpart:

(a) . . .

(b) . . .

(c) . . .

(d) . . .

(e) “Traditional standardized test” shall mean a systematic method of gathering information from objectively scored items that allow the test taker to select one or more of the given options or choices as their response. Examples include multiple-choice, true-false, and matching items. Traditional standardized tests are those that require the student (and not the examiner/assessor) to directly use a "bubble" answer sheet. Traditional

standardized tests do not include performance assessments or assessments in which students perform real-world tasks that demonstrate application of knowledge and skills; assessments that are otherwise required to be administered by federal law; and/or assessments used for diagnostic or formative purposes, including but not limited to assessments used for diagnostic screening required by Education Law §3208(5).

4. Subdivision (b) of section 151-1.3 of the Regulations of the Commissioner of Education is amended, effective July 30, 2014, as follows:

(b) Assessments, monitoring and reporting.

(1) . . .

(2) . . .

(3) . . .

(4) Prohibition on administration of traditional standardized tests.

Notwithstanding the provisions of this subdivision, no school district shall administer traditional standardized tests in a pre-kindergarten program; provided that nothing herein shall prohibit assessments in which students perform real-world tasks that demonstrate application of knowledge and skills or assessments that are otherwise required to be administered by federal law.

8 NYCRR §§100.3, 151-1.2 & 151-1.3

STATEMENT OF FACTS AND CIRCUMSTANCES WHICH NECESSITATE EMERGENCY ACTION

The proposed amendment is necessary to conform the Commissioner's Regulations to Subpart A of Part AA of Chapter 56 of the Laws of 2014, which became effective April 1, 2014.

Part AA, Subpart A of Chapter 56 of the Laws of 2014, which became effective on April 1, 2014, adds a new subdivision (44) to Education Law section 305, and amends Education Law section 3602-e(15), to direct the Commissioner to prohibit the administration of traditional standardized tests, as defined in regulations issued by the Commissioner, in prekindergarten programs (including Universal Prekindergarten programs), and grades kindergarten through second grade. Consistent with the statute, the proposed amendment prohibits the administration of traditional standardized tests in prekindergarten programs (including Universal Prekindergarten programs), and grades kindergarten through two.

The proposed amendment was adopted as an emergency action at the April 28-29, 2014 Regents meeting, effective April 29, 2014, and has now been adopted as a permanent rule at the July 8-9, 2014 Regents meeting. Pursuant to SAPA §203(1), the earliest effective date of the permanent rule is July 30, 2014, the date a Notice of Adoption will be published in the State Register. However, the April emergency rule will expire on July 27, 2014, 90 days after its filing with the Department of State on April 29, 2014. A lapse in the rule's effective date could disrupt Emergency action is therefore necessary for the preservation of the general welfare to ensure that the proposed rule

adopted by emergency action at the April 2013 Regents meeting, and adopted as a permanent rule at the July 2014 Regents meeting, remains continuously in effect until the effective date of its permanent adoption.

AMENDMENT OF THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to Education Law sections 101, 207, 208, 209, 210, 215, 305, 308, 309, 3204 and 3602-e and Part AA of Subpart A of Chapter 56 of the Laws of 2014

1. Subdivision (a) of section 100.3 of the Regulations of the Commissioner of Education is amended, effective July 28, 2014, as follows:

(a) Prekindergarten and kindergarten programs operated by public schools and voluntarily registered nonpublic schools.

(1) . . .

(2) . . .

(3) . . .

(4) . . .

(5) Prohibition on administration of traditional standardized tests.

(i) For purposes of this subdivision, "traditional standardized test" shall mean a systematic method of gathering information from objectively scored items that allow the test taker to select one or more of the given options or choices as their response. Examples include multiple-choice, true-false, and matching items. Traditional standardized tests are those that require the student (and not the examiner/assessor) to directly use a "bubble" answer sheet. Traditional standardized tests do not include performance assessments or assessments in which students perform real-world tasks that demonstrate application of knowledge and skills; assessments that are otherwise required to be administered by federal law; and/or assessments used for diagnostic or formative purposes, including but not limited to assessments used for diagnostic screening required by Education Law §3208(5).

(ii) Notwithstanding the provisions of this subdivision, no school district or voluntarily registered nonpublic school shall administer traditional standardized tests in pre-kindergarten and kindergarten programs; provided that nothing herein shall prohibit assessments in which students perform real-world tasks that demonstrate application of knowledge and skills or assessments that are otherwise required to be administered by federal law.

2. Paragraph (2) of subdivision (b) of section 100.3 of the Regulations of the Commissioner of Education is amended, effective July 28, 2014, as follows:

(2) Required assessments.

(i) Except as otherwise provided in subparagraphs (ii), [and] (iii) and (v) 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) . . .

(b) . . .

(ii) . . .

(iii) . . .

(iv) . . .

(v) Prohibition on administration of traditional standardized tests.

(a) For purposes of this subdivision, "traditional standardized test" shall mean a systematic method of gathering information from objectively scored items that allow the test taker to select one or more of the given options or choices as their response. Examples include multiple-choice, true-false, and matching items. Traditional standardized tests are those that require the student (and not the examiner/assessor) to directly use a "bubble"

answer sheet. Traditional standardized tests do not include performance assessments or assessments in which students perform real-world tasks that demonstrate application of knowledge and skills; assessments that are otherwise required to be administered by federal law; and/or assessments used for diagnostic or formative purposes, including but not limited to assessments used for diagnostic screening required by Education Law §3208(5).

(b) Notwithstanding the provisions of this subdivision, no school district or voluntarily registered nonpublic school shall administer traditional standardized tests in grades one and two; provided that nothing herein shall prohibit assessments in which students perform real-world tasks that demonstrate application of knowledge and skills or assessments that are otherwise required to be administered by federal law.

3. Section 151-1.2 of the Regulations of the Commissioner of Education is amended, effective July 28, 2014, as follows:

§151-1.2 Definitions.

As used in this Subpart:

(a) . . .

(b) . . .

(c) . . .

(d) . . .

(e) “Traditional standardized test” shall mean a systematic method of gathering information from objectively scored items that allow the test taker to select one or more of the given options or choices as their response. Examples include multiple-choice, true-false, and matching items. Traditional standardized tests are those that require the student (and not the examiner/assessor) to directly use a "bubble" answer sheet. Traditional

standardized tests do not include performance assessments or assessments in which students perform real-world tasks that demonstrate application of knowledge and skills; assessments that are otherwise required to be administered by federal law; and/or assessments used for diagnostic or formative purposes, including but not limited to assessments used for diagnostic screening required by Education Law §3208(5).

4. Subdivision (b) of section 151-1.3 of the Regulations of the Commissioner of Education is amended, effective July 28, 2014, as follows:

(b) Assessments, monitoring and reporting.

(1) . . .

(2) . . .

(3) . . .

(4) Prohibition on administration of traditional standardized tests.

Notwithstanding the provisions of this subdivision, no school district shall administer traditional standardized tests in a pre-kindergarten program; provided that nothing herein shall prohibit assessments in which students perform real-world tasks that demonstrate application of knowledge and skills or assessments that are otherwise required to be administered by federal law.