






TO: P-12 Education Committee

FROM: Kimberly Wilkins 

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

DATE: July 2, 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 implement the provisions of Section 30 of Part YYY of Chapter 59 of the Laws of 2019.

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 and Section 30 of Part YYY of Chapter 59 of the Laws of 2019).

Proposed Handling

The proposed amendment is presented to the P-12 Education Committee for recommendation and to the Full Board for adoption both as an emergency and as a permanent rule at the July 2019 meeting of the Board of Regents. An emergency measure is necessary at the July 2019 meeting to ensure that the emergency measure adopted at the April 2019 meeting remains continuously in effect until it can be adopted as a permanent rule on July 31, 2019. A copy of the proposed rule and a statement of facts and circumstances justifying the emergency action are attached. Supporting materials are available upon request from the Secretary to the Board of Regents.

Procedural History

The proposed amendment was presented to the P-12 Education Committee for recommendation and to the Full Board for adoption as an emergency action at the January 2019 meeting of the Board of Regents, effective January 15, 2019. A Notice of Emergency Adoption and Proposed Rulemaking was published in the State Register on January 30, 2019. However, Section 30 of Part YYY of Chapter 59 of the Laws of 2019 removed the sunset date for these provisions in the statute, making the provisions permanent. A Revised Rulemaking and Emergency Adoption was necessary at the April 2019 meeting to conform the regulations to the statute. Following the 45-day public comment period required under the State Administrative Procedure Act, the Department received one comment on the revised proposed rulemaking. An Assessment of Public Comment is attached as Attachment C.

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 provisions were set to expire and be deemed repealed on December 31, 2018. In April of 2014, the Board of Regents adopted amendments to the Commissioner's regulations to implement these sections and the regulatory provisions were to expire on December 31, 2018.

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 were adopted by the Board of Regents at its January 2019 meeting to immediately extend these provisions an additional year to comply with the statute. However, Section 30 of Part YYY of the Chapter 59 of the Laws of 2019 removed the December 31, 2019 sunset date for these provisions in the statute, making the provisions permanent. A Revised Rulemaking and Emergency Adoption was necessary at the April 2019 meeting to conform the regulations to the statute.

Related Regents Items

[April 2019](http://www.regents.nysed.gov/common/regents/files/419p12a7.pdf) (<http://www.regents.nysed.gov/common/regents/files/419p12a7.pdf>)

[January 2019](http://www.regents.nysed.gov/meetings/2019/2019-01/p-12-education) <http://www.regents.nysed.gov/meetings/2019/2019-01/p-12-education>

[April 2014](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 July 16, 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 ensure that the proposed amendment implements the provisions of Section 30 of Part YYY of Chapter 59 of the Laws of 2019 and remains in effect until adopted as a permanent rule; and further

VOTED: That §104.3 of the Regulations of the Commissioner of Education be amended, as submitted, effective July 31, 2019.

Timetable for Implementation

If adopted at the July 2019 Regents meeting, the proposed amendment will become effective as an emergency rule on July 16, 2019 and as a permanent rule on July 31, 2019.

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]:

(a) [no] 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 purposed 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 timely implement the provisions of Education Law §305(45) and (46) as added by 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 and Section 30 of Part YYY of Chapter 59 of the Laws of 2019. Section 30 of Part YYY of Chapter 59 of the Laws of 2019 removed the sunset date for these provisions in the statute, making the provisions permanent.

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 45-day public comment period for revised rulemakings provided for in the State Administrative Procedure Act (SAPA) sections 201(1) and (5), would be the July 2019 Regents meeting. Furthermore, pursuant to SAPA section 203(1), the earliest effective date of the proposed rule, if adopted at the July 2019 meeting, would be July 31, 2019, the date a Notice of Adoption would be published in the State Register.

Therefore, emergency action is necessary at the July 2019 Regents meeting for the preservation of the general welfare to ensure that the emergency action taken at the April 2019 meeting remains in effect to implement the provisions of Section 30 of Part YYY of Chapter 59 of the Laws of 2019 until it can be adopted as a permanent rule.

8 NYCRR §104.3

ASSESSMENT OF PUBLIC COMMENT

1. COMMENT:

Commenter, a parent of public school children, resident of New York City, and professional educator, strongly supports the proposed amendment. Commenter expressed concern with the value and reliability of the assessments and as a result supports the exclusion of such results on students' official transcripts or permanent records.

DEPARTMENT RESPONSE:

No response is necessary as the comment is supportive.