





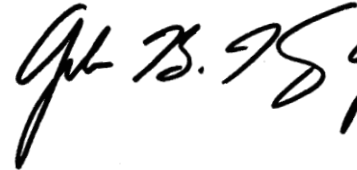
THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK / ALBANY, NY 12234

TO: P-12 Education Committee

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 Prekindergarten Programs and Grades Kindergarten through Two

DATE: April 21, 2014

AUTHORIZATION(S):  

SUMMARY

Issue for Decision

Should the Regents approve as an emergency action 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 is being presented to the P-12 Education Committee for recommendation and to the Full Board for emergency adoption at its April 2014 meeting. A copy of the proposed amendment and statement of the facts and circumstances which necessitate emergency action are attached. It is anticipated that a Notice of Emergency Adoption and Proposed Rule Making will be published in the State Register on May 14, 2014.

Procedural History

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.

Background Information

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 April 29, 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 to immediately conform the Commissioner’s Regulations to Subpart A of Part AA of Chapter 56 of the Laws of 2014, relating to prohibiting the administration of traditional standardized tests in prekindergarten

programs (including Universal Pre-Kindergarten programs) and grades kindergarten through two, and thus ensure the timely implementation of the statute.

Timetable for Implementation

If adopted as an emergency rule at the April meeting, the proposed amendment will become effective on April 29, 2014, and will remain in effect for 90 days. It is anticipated that the proposed amendment will be presented for adoption as a permanent rule at the July Regents meeting, after publication of a Notice of Emergency Rule Making and Proposed Rule Making in the State Register and expiration of a the 45-day public comment period prescribed in the State Administrative Procedure Act.

8 NYCRR §§100.3, 151-1.2 and 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.

Because the Board of Regents meets at scheduled intervals, the July 10-11, 2014 meeting is the earliest the proposed amendment could be presented for adoption, after publication of a Notice of Emergency Adoption and Proposed Rule Making in the State Register on May 14, 2014 and expiration of the 45-day public comment period required under the State Administrative Procedure Act. Furthermore, pursuant to SAPA section 203(1), the earliest effective date of the proposed amendment, if adopted at the July meeting, would be July 30, 2014, the date a Notice of Adoption would be published in the State Register. However, emergency adoption of the proposed amendment is

necessary now for the preservation of the general welfare to immediately conform the Commissioner's Regulations to timely implement Subpart A of Part AA of Chapter 56 of the Laws of 2014, relating to prohibiting the administration of traditional standardized tests in prekindergarten programs (including Universal Pre-Kindergarten programs and grades kindergarten through two, and thus ensure the timely implementation of the statute.

It is anticipated that the proposed amendment will be presented to the Board of Regents for permanent adoption at its July 10-11, 2014 meeting, which is the first scheduled meeting after expiration of the 45-day public comment period mandated by the State Administrative Procedure Act.

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 April 29, 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 April 29, 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 April 29, 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).

3. Subdivision (b) of section 151-1.3 of the Regulations of the Commissioner of Education is amended, effective April 29, 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.