



TO: P-12 Education Committee

FROM: Angelica Infante-Green *A. Infante - Green*

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

DATE: April 1, 2019

AUTHORIZATION(S):

SUMMARY

Issue for Decision

Should the Board of Regents adopt the revisions to the proposed amendment to §104.3 of the Commissioner's Regulations to timely implement the provisions of Section 30 of Part YYY of the 2019-2020 Enacted State Budget (S.1509-C/A.2009-C).

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 the 2019-2020 Enacted State Budget [S.1509-C/A.2009-C]).

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 April 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

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 the 2019-2020 Enacted State Budget (S.1509-C/A.2009-C) removed the sunset date for these provisions in the statute, making the provisions permanent. As such, a Notice of Revised Rulemaking and Emergency Adoption are necessary to ensure that the January emergency action, which will expire on April 14, 2019, remains continuously in effect, as revised, to comply with the provisions in the Enacted Budget, until it can be permanently adopted at the July 15-16, 2019 Regents meeting. A Notice of Emergency Adoption and Revised Rule Making will be published in the State Register on April 24, 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 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 expired 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 2019-2020 Enacted State Budget (S.1509-C/A.2009-C) removed the December 31, 2019 sunset date for these provisions in the statute, making the provisions permanent. Therefore, a Revised Rulemaking and Emergency Adoption are necessary to immediately conform the regulations to the statute.

Related Regents Items

January 2019: <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

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 April 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 ensure that the proposed amendment is revised immediately to

timely implement the provisions of Section 30 of Part YYY of the 2019-2020 Enacted State Budget (S.1509-C/A.2009-C).

Timetable for Implementation

If adopted at the April 2019 Regents meeting, the proposed amendment will become effective as an emergency rule on April 15, 2019. Following the 45-day public comment period, it is anticipated that the proposed amendment will be presented to the Board of Regents for permanent adoption at the July 2019 meeting. If adopted at the July 2019 meeting, the proposed amendment will become effective 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 the 2019-2020 Enacted State Budget (S.1509-C/A.2009-C) which 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 April 2019 Regents meeting for the preservation of the general welfare to ensure that the emergency action taken at the January 2019 meeting remains continuously in effect, as revised to timely implement the provisions of section 30 of Part YYY of the 2019-2020 Enacted State Budget (S.1509-C/A.2009-C) until it can be adopted as a permanent rule.

It is anticipated that the proposed rule will be presented for adoption as a permanent rule at the July Regents meeting, which is the first scheduled meeting after

expiration of the 45-day public comment period prescribed for revised rulemakings in the SAPA for State agency rule makings.