

3732

2009-2010 Regular Sessions

I N S E N A T E

March 30, 2009

Introduced by Sens. LAVALLE, LARKIN, MORAHAN, VOLKER -- read twice and ordered printed, and when printed to be committed to the Committee on Higher Education

AN ACT to amend the education law, in relation to the administration of standardized tests

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Subdivision 2 of section 342 of the education law, as added
2 by chapter 813 of the laws of 1980, the closing paragraph as amended by
3 chapter 565 of the laws of 1986, is amended and two new subdivisions 12
4 and 13 are added to read as follows:
5 2. [Within ninety days after filing a standardized test pursuant to
6 subdivision one of this section and for a period of not less than ninety
7 days after the offer is made] A. AT OR THIRTY DAYS PRIOR TO THE ADMINIS-
8 TRATION OF A STANDARDIZED TEST, AND FOR A PERIOD OF NOT LESS THAN NINETY
9 DAYS AFTER THE ADMINISTRATION OF A STANDARDIZED TEST, the test agency
10 shall provide to the test subject the opportunity to [secure] REQUEST:
11 [a.] (I) a copy of the test questions used to calculate the test
12 subject's raw score;
13 [b.] (II) a copy of the test subject's answer sheet, or answer record
14 where there is no answer sheet, together with a copy of the correct
15 answer sheet to the same test with questions used to calculate the test
16 subject's raw score so marked; and
17 [c.] (III) a statement of the raw score used to calculate the scores
18 reported to the test subject.
19 [The agency may charge a nominal fee for providing such information,
20 not to exceed the direct cost thereof.]
21 B. THE TEST AGENCY SHALL PROVIDE A MEANS FOR THE TEST SUBJECT TO
22 REQUEST THE INFORMATION DESCRIBED IN SUBPARAGRAPHS (I), (II) AND (III)
23 OF PARAGRAPH A OF THIS SUBDIVISION THROUGH AN ONLINE INTERNET BASED LINK
24 OR TEST AGENCY HOME PAGE.

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets
[] is old law to be omitted.

LBD08836-01-9

1 C. FORTY-FIVE DAYS AFTER THE RESULTS OF ANY STANDARDIZED TESTS ARE
2 RELEASED, THE TEST AGENCY SHALL MAKE AVAILABLE TO ANY TEST SUBJECT WHO
3 HAS REQUESTED THE MATERIALS DESCRIBED IN SUBPARAGRAPHS (I), (II) AND
4 (III) OF PARAGRAPH A OF THIS SUBDIVISION WITH THOSE MATERIALS WITHIN
5 TWENTY-FIVE DAYS AFTER THEY HAVE RECEIVED SUCH REQUEST.

6 D. EACH TEST AGENCY SHALL MAINTAIN A RECORD OF ALL SUCH REQUESTS FOR
7 EACH TEST ADMINISTRATION FOR A PERIOD OF ONE YEAR AFTER SUCH TEST ADMIN-
8 ISTRATION AND PROVIDE THE TOTAL NUMBER OF REQUESTS FOR SUCH TEST ADMIN-
9 ISTRATION IN AN ANNUAL REPORT TO THE DEPARTMENT.

10 E. EACH TEST AGENCY SHALL MAINTAIN A RECORD OF THE TOTAL NUMBER OF
11 ERRORS FOUND BY THE TEST SUBJECT AND AN EXPLANATION OF THE REASON FOR
12 SUCH ERRORS AND WHAT THE OUTCOME WAS REGARDING ANY CHANGE IN THE TEST
13 SUBJECT'S RAW SCORE AND SCALED SCORE.

14 F. THE AGENCY MAY CHARGE A NOMINAL FEE WHICH SHALL BE LIMITED TO TEN
15 DOLLARS, FOR MAKING THIS INFORMATION AVAILABLE, AND FURTHER, THAT AT
16 LEAST TWENTY PERCENT OF THE YEAR-TO-YEAR INCREASE IN TOTAL MANAGEMENT
17 SALARIES PAID BY THE TEST AGENCY AND TWENTY PERCENT OF THE YEAR-TO-YEAR
18 INCREASE IN TOTAL INCOME OF THE TEST AGENCY SHALL BE ACCOUNTED FOR SEPA-
19 RATELY AND ALLOCATED DIRECTLY FOR THE SOLE PURPOSE OF MAINTAINING THE
20 NOMINAL FEE STIPULATED HEREIN FOR MAKING THE MATERIALS DESCRIBED IN
21 SUBPARAGRAPHS (I), (II) AND (III) OF PARAGRAPH A OF THIS SUBDIVISION
22 AVAILABLE TO THE TEST SUBJECTS WHO HAVE REQUESTED SUCH MATERIALS.

23 G. Notwithstanding any other provision in this section, a test agency
24 shall permit a test subject to elect in writing OR ONLINE THROUGH AN
25 INTERNET BASED LINK OR TEST AGENCY HOME PAGE, this opportunity both at
26 the time the test subject registers to take a test and at the time the
27 test agency reports test scores to the test subject; provided, however,
28 that the provisions of this paragraph shall not apply where either the
29 materials described in [paragraph (a) or (b)] SUBPARAGRAPHS (I), (II)
30 AND (III) OF PARAGRAPH A of this subdivision are provided during the
31 test administration. The form permitting such election shall describe
32 the opportunity offered pursuant to this subdivision in clear and plain
33 English and shall be part of and included in the test registration form
34 and in a form provided to the test subject at the time test scores are
35 reported to the test subject. SUCH FORM PERMITTING SUCH ELECTION
36 DESCRIBING THE OPPORTUNITY TO OBTAIN THE MATERIALS SET FORTH IN SUBPARA-
37 GRAPHS (I), (II) AND (III) OF PARAGRAPH A OF THIS SUBDIVISION SHALL ALSO
38 BE AVAILABLE ON THE TEST AGENCY'S WEB SITE AND SHALL PROVIDE
39 INSTRUCTIONS ON HOW TO REQUEST THESE MATERIALS ELECTRONICALLY.

40 12. A. THERE IS HEREBY ESTABLISHED THE NEW YORK STATE BOARD OF TESTING
41 INTEGRITY WITHIN THE DEPARTMENT. SUCH BOARD SHALL CONSIST OF NINE
42 MEMBERS WHO SHALL EACH SERVE THREE YEAR TERMS. TWO MEMBERS SHALL BE
43 APPOINTED BY THE GOVERNOR, TWO MEMBERS SHALL BE APPOINTED BY THE TEMPO-
44 RARY PRESIDENT OF THE SENATE AND TWO MEMBERS SHALL BE APPOINTED BY THE
45 SPEAKER OF THE ASSEMBLY. THE COMMISSIONER, THE ATTORNEY GENERAL AND THE
46 COMPTROLLER, OR THEIR DESIGNEE SHALL ALSO SERVE ON THE BOARD. THE FOCUS
47 OF THE BOARD SHALL BE TO REPRESENT AND PROTECT AT ALL TIMES AND FOR ALL
48 INSTANCES THE INTEREST OF THE TEST SUBJECT WHILE MAINTAINING THE INTEG-
49 RITY OF THE TESTING PROCESS.

50 B. THE BOARD SHALL BE RESPONSIBLE TO MAINTAIN, ASSESS AND MAKE RECOM-
51 MENDATIONS TO THE REGENTS ALL ASPECTS OF THE ADMINISTRATION OF STANDARD-
52 IZED TESTING IN NEW YORK, AS DEFINED IN THIS ARTICLE. THIS SHALL
53 INCLUDE, BUT SHALL NOT BE LIMITED TO:

54 (I) THE REGISTRATION PROCESS.

55 (II) COMPLIANCE WITH ALL APPLICABLE RULES AND LAWS REGARDING THE
56 DISCLOSURE OF RELEVANT AND REQUIRED INFORMATION.

1 (III) THE TEST SUBJECT'S ABILITY TO OBTAIN TEST QUESTIONS, THE CORRECT
2 ANSWERS TO THOSE QUESTIONS AND THE TEST SUBJECT'S TEST ANSWERS.

3 (IV) THE SECURITY OF THE TESTING PROCESS, INCLUDING THE HANDLING,
4 PACKAGING, TRANSPORTING, SCORING AND RECORDING OF ALL TEST ANSWER
5 SHEETS.

6 C. THE BOARD MAY REVIEW THE TESTING QUESTIONS TO IDENTIFY BIASES IN
7 THE QUESTIONS OR OTHER POSSIBLE TESTING ISSUES WHICH MAY AFFECT THE
8 SCORES OF ANY PARTICULAR GENDER, ETHNIC OR RELIGIOUS GROUP. THE BOARD
9 MAY REVIEW ALL ASPECTS OF THE TESTING ENVIRONMENT FOR OVERALL EQUITY FOR
10 ALL TEST SUBJECTS IN NEW YORK STATE.

11 D. ONCE A YEAR THE BOARD SHALL OVERSEE A PROCESS BY WHICH A ONE
12 PERCENT SAMPLE OF A PREVIOUSLY ADMINISTERED STANDARDIZED TEST BY EACH
13 TEST AGENCY OFFERED IN NEW YORK STATE ARE RESCORED TO EXAMINE ACCURACY,
14 AND CONSISTENCY OF SCORING ON ALL PORTIONS OF THE STANDARDIZED TEST.

15 E. THE PROCESS OF SAMPLING AND RESCORE SHALL BE CONDUCTED BY THE TEST
16 AGENCY ADMINISTERING STANDARDIZED TESTS IN NEW YORK, WHO SHALL MAKE A
17 REPORT TO THE BOARD NOT MORE THAN SIXTY DAYS AFTER COMPLETING THIS
18 RESCORING WHICH WILL IDENTIFY ANY ERRORS IN SCORING, THE REASON FOR
19 THOSE ERRORS AND WHAT IS BEING DONE TO CORRECT SUCH ERRORS IN THE
20 FUTURE.

21 13. A FEE OF ONE DOLLAR SHALL BE PAID BY THE TEST AGENCY FOR EACH
22 STANDARDIZED TEST ADMINISTERED IN NEW YORK STATE, WHICH SHALL BE DEPOS-
23 ITED IN AN ACCOUNT ESTABLISHED BY THE NEW YORK STATE COMPTROLLER, WHICH
24 SHALL BE USED BY THE NEW YORK STATE BOARD OF TESTING INTEGRITY TO COVER
25 THE COSTS ASSOCIATED THEREWITH.

26 S 2. This act shall take effect on the first of September next
27 succeeding the date on which it shall have become a law. A test agency
28 shall not be required to revise its application brochure or forms for
29 the test year commencing September 1, 2010 to incorporate the require-
30 ments of this act.