S T A T E O F N E W Y O R K

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2011-2012 Regular Sessions

S E N A T E - A S S E M B L Y

January 14, 2011

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

IN ASSEMBLY -- Introduced by M. of A. ORTIZ -- read once and referred to the Committee on 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:

Section 1. Subdivision 2 of section 342 of the education law, as added by chapter 813 of the laws of 1980, the closing paragraph as amended by chapter 565 of the laws of 1986, is amended and two new subdivisions 12 and 13 are added to read as follows:

2. [Within ninety days after filing a standardized test pursuant to subdivision one of this section and for a period of not less than ninety days after the offer is made] A. AT OR THIRTY DAYS PRIOR TO THE ADMINISTRATION OF A STANDARDIZED TEST, AND FOR A PERIOD OF NOT LESS THAN NINETY DAYS AFTER THE ADMINISTRATION OF A STANDARDIZED TEST, the test agency shall provide to the test subject the opportunity to [secure] REQUEST:

[a.] (I) a copy of the test questions used to calculate the test subject's raw score;

[b.] (II) a copy of the test subject's answer sheet, or answer record where there is no answer sheet, together with a copy of the correct answer sheet to the same test with questions used to calculate the test subject's raw score so marked; and

[c.] (III) a statement of the raw score used to calculate the scores reported to the test subject.

[The agency may charge a nominal fee for providing such information, not to exceed the direct cost thereof.]

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

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B. THE TEST AGENCY SHALL PROVIDE A MEANS FOR THE TEST SUBJECT TO REQUEST THE INFORMATION DESCRIBED IN SUBPARAGRAPHS (I), (II) AND (III) OF PARAGRAPH A OF THIS SUBDIVISION THROUGH AN ONLINE INTERNET BASED LINK OR TEST AGENCY HOME PAGE.

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

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

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

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

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

12. A. THERE IS HEREBY ESTABLISHED THE NEW YORK STATE BOARD OF TESTING INTEGRITY WITHIN THE DEPARTMENT. SUCH BOARD SHALL CONSIST OF NINE MEMBERS WHO SHALL EACH SERVE THREE YEAR TERMS. TWO MEMBERS SHALL BE APPOINTED BY THE GOVERNOR, TWO MEMBERS SHALL BE APPOINTED BY THE TEMPORARY PRESIDENT OF THE SENATE AND TWO MEMBERS SHALL BE APPOINTED BY THE SPEAKER OF THE ASSEMBLY. THE COMMISSIONER, THE ATTORNEY GENERAL AND THE COMPTROLLER, OR THEIR DESIGNEE SHALL ALSO SERVE ON THE BOARD. THE FOCUS OF THE BOARD SHALL BE TO REPRESENT AND PROTECT AT ALL TIMES AND FOR ALL INSTANCES THE INTEREST OF THE TEST SUBJECT WHILE MAINTAINING THE INTEGRITY OF THE TESTING PROCESS.

B. THE BOARD SHALL BE RESPONSIBLE TO MAINTAIN, ASSESS AND MAKE RECOMMENDATIONS TO THE REGENTS ALL ASPECTS OF THE ADMINISTRATION OF STANDARD-

IZED TESTING IN NEW YORK, AS DEFINED IN THIS ARTICLE. THIS SHALL INCLUDE, BUT SHALL NOT BE LIMITED TO:

(I) THE REGISTRATION PROCESS.

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

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

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

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

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

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

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

S 2. This act shall take effect on the first of September next succeeding the date on which it shall have become a law. A test agency shall not be required to revise its application brochure or forms for the test year commencing September 1, 2012 to incorporate the requirements of this act.