

2333--A

2013-2014 Regular Sessions

I N   A S S E M B L Y

January 14, 2013

---

Introduced by M. of A. PAULIN, ARROYO, BENEDETTO -- Multi-Sponsored by  
-- M. of A. BRENNAN, WRIGHT -- read once and referred to the Committee  
on Education -- recommitted to the Committee on Education in  
accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill  
amended, ordered reprinted as amended and recommitted to said committee

AN ACT to require annual reports and create a regents review board to  
audit assessments used to determine grade promotion, graduation or  
adequate yearly progress for validity, reliability, alignment to standards  
and appropriateness of use

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

1     Section 1.     Reporting requirements. 1. (a) Not later than September  
2     fifteenth of each year, the commissioner of education shall submit to  
3     the state board of regents, the temporary president of the senate and  
4     the speaker of the assembly:  
5     (i) A written report that conclusively demonstrates the validity,  
6     reliability, alignment to the state learning standards established by  
7     the department of education (learning standards) and appropriateness of  
8     use for its intended purposes for each assessment (noting each instrument  
9     and the dates of usage) used by the department of education to  
10    determine a student's eligibility for a high school diploma, promotion  
11    to grade, or measurement of adequate yearly progress (AYP) under the  
12    federal No Child Left Behind Act of a school or district in the preceding  
13    school year. Demonstration of assessment validity, reliability,  
14    alignment to learning standards and appropriateness of use must be made  
15    in accordance with applicable professional assessment guidelines and  
16    standards of the American Educational Research Association (AERA), the  
17    American Psychological Association (APA) and the National Council on  
18    Measurement in Education (NCME) (collectively and as may be modified

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

LBD03211-02-4

1 from time to time, the joint standards), including pedagogic and curric-  
2 ular, as well as psychometric, standards.

3 (ii) A technical manual for each assessment used by the department of  
4 education and used to determine a student's eligibility for a high  
5 school diploma, promotion to grade, or measurement of AYP of a school or  
6 district in the preceding school year. The technical manual must comply  
7 with the professional requirements of the assessment industry as recog-  
8 nized by the AERA, APA and NCME.

9 (b) The annual report and technical manual shall be made available to  
10 the public upon submission to the state board of regents and to the  
11 temporary president of the senate and the speaker of the assembly.

12 2. Failure of the commissioner of education to produce a report under  
13 subparagraph (i) of paragraph (a) of subdivision one of this section or  
14 a technical manual under subparagraph (ii) of such paragraph for any  
15 given assessment shall be deemed a failure to demonstrate the validity,  
16 reliability, alignment to learning standards and appropriateness of use  
17 of such assessment, and the results from such assessment shall not be  
18 used to determine a student's eligibility for a high school diploma,  
19 promotion to grade, or measurement of AYP of a school or district in the  
20 preceding school year. The commissioner of education shall substitute an  
21 alternate measure for the decision taken on the basis of the adminis-  
22 tered assessment. Where a decision to graduate or promote a student  
23 cannot be based on a demonstrably valid standardized assessment, the  
24 decision will be based on a combination of final grade in the relevant  
25 academic courses and faculty recommendations in place of the results of  
26 such examination. Any part of an assessment not demonstrated to be valid  
27 shall not be used for any subsequent determination.

28 S 2. Audit requirements. The state board of regents shall appoint an  
29 independent panel of experts on curricular assessments qualified to  
30 determine whether or not an assessment meets professional standards of  
31 the measurement industry and scholarly associations for validity, reli-  
32 ability, alignment to learning standards and appropriateness of use. The  
33 panel shall be known as the regents review board, hereafter referred to  
34 as the board. The board shall consist of five members. The members of  
35 the board will be members of the AERA or the APA. Each member of the  
36 board will be a recognized expert in the field of testing psychometrics  
37 or curriculum evaluation and will have at least ten years experience in  
38 evaluating validity, reliability, alignment with learning standards and  
39 appropriateness of use of tests at the primary and secondary school  
40 levels.

41 1. The board shall review each assessment used by the department of  
42 education to determine a student's eligibility for a high school diplo-  
43 ma, promotion to grade, or measurement of AYP of a school or district to  
44 determine whether the assessment meets the joint standards for assess-  
45 ment validity, reliability, alignment to learning standards and appro-  
46 priateness of use. The board shall also review the commissioner of  
47 education's annual report and supporting materials concerning the valid-  
48 ity, reliability, alignment to learning standards and appropriateness of  
49 use of the assessments, and the technical manual of each assessment. The  
50 board shall have complete access to all documents of the department of  
51 education relating to the assessments reviewed by the board, including  
52 pilot and/or field test results for such assessments and any changes to  
53 materials or practices relating to such assessments implemented as a  
54 result of such pilot and/or field tests. The board shall maintain the  
55 confidentiality of all documents deemed to contain proprietary informa-  
56 tion.

2. The board shall determine whether or not each assessment used by the department of education for graduation, promotion or determination of AYP is valid, reliable, aligned to the learning standards, and appropriate for use. The board shall submit, not later than October fifteenth of each year, a written report of its findings to the state board of regents, the temporary president of the senate and the speaker of the assembly. The report shall be made available to the public upon its submission as provided in this subdivision.

3. If the board determines that any part of an assessment used by the department of education does not meet the standards for validity, reliability, alignment to learning standards or appropriateness of use under the joint standards, such part or parts of those assessments shall be considered invalid, and the results from such assessment shall not be used to determine a student's eligibility for a high school diploma, promotion to grade, or measurement of AYP of a school or district in any school year. The commissioner of education shall substitute an alternate measure for the decision taken on the basis of the administered assessment. Where a decision to graduate or promote a student is based on an assessment not demonstrably valid, the decision will be based on a combination of final grade in the relevant academic courses and faculty recommendations in place of the results of such examination. The determination of the board shall be final as to the use of those assessments.

4. If any part of an assessment used by the department of education has been determined by the board to fail to meet the joint standards and related research for assessment validity, reliability, alignment to learning standards or appropriateness of use, the commissioner of education shall not use such part or parts of the assessment in any subsequent test administrations.

S 3. Pilot testing. 1. No later than sixty days prior to the department of education's scheduled administration of any assessment to determine a student's eligibility for a high school diploma, promotion to grade, or measurement of AYP of a school or district in the preceding school year, the commissioner of education shall submit to the board, the state board of regents and the temporary president of the senate and the speaker of the assembly the results of all pilot and/or field tests conducted for that assessment and make available to the board all records relating to such pilot and/or field tests and results. Pilot and/or field tests are assessments administered by the department of education that are not being used for decisions of graduation, promotion to grade, or measurement of AYP but contain individual questions that are to be used on assessments to determine a student's eligibility for a high school diploma, promotion to grade, or measurement of AYP. For purposes of this section, results of pilot and/or field tests shall include, but not be limited to, analysis of answers to questions on the administered pilot and/or field test based on percentage answered correctly, breakdown of results according to race and gender, an explanation of how the pilot and/or field test was administered, and an explanation of the learning standard a question purports to test. The failure to submit and identify pilot and/or field test results or to provide access to records as required under this subdivision shall preclude the department of education from using or administering the assessment.

2. Where the board has received from the commissioner of education the results of the pilot and/or field test for an assessment as required under subdivision one of this section, the board shall, not later than thirty days prior to the department of education's scheduled adminis-

1 tration of such assessment, deliver to the state board of regents and  
2 the temporary president of the senate and the speaker of the assembly a  
3 written report evaluating the pilot and/or field tests and the results  
4 of the pilot and/or field tests provided by the department of education.  
5 The written report of the board shall be made available to the public.

6 3. In its evaluation, the board will identify any recognizable short-  
7 comings of the pilot and/or field tests. If the board determines that  
8 any part of the pilot and/or field tests were not conducted in accord-  
9 ance with the joint standards, that they fall short of needed prepara-  
10 tion, or if it appears to the board that the assessment for which the  
11 pilot and/or field tests were conducted is likely to fail to meet the  
12 criteria for validity, reliability, alignment to learning standards, or  
13 appropriateness of use under the joint standards, the board shall recom-  
14 mend to the state board of regents that the department of education  
15 shall not use or administer the assessment for which the pilot and/or  
16 field tests were conducted. The state board of regents shall, within  
17 fourteen days of receipt of the board's report, provide to the board,  
18 the temporary president of the senate and the speaker of the assembly  
19 written notice of the actions proposed to be taken by the state board of  
20 regents with respect to the recommendations of the board contained in  
21 such report.

22 S 4. This act shall take effect on the ninetieth day after it shall  
23 have become a law; provided, however, that effective immediately, the  
24 addition, amendment and/or repeal of any rule or regulation necessary  
25 for the implementation of this act on its effective date is authorized  
26 and directed to be made and completed on or before such effective date.