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

S. 5540--A A. 7442--A

2013-2014 Regular Sessions

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

May 16, 2013

IN SENATE -- Introduced by Sen. LAVALLE -- read twice and ordered printed, and when printed to be committed to the Committee on Education -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

IN ASSEMBLY -- Introduced by M. of A. NOLAN, RUSSELL -- read once and referred to the Committee on Education -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the education law, in relation to assess, bi-sect and critique through truth in testing

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

Section 1. The education law is amended by adding a new article 7-B to read as follows:

ARTICLE 7-B

TRUTH IN TESTING FOR THE COMMON CORE

SECTION 349-A. DEFINITIONS.
349-B. DISCLOSURE.
349-C. REPORTING.
349-D. APPEALS PROCESS.
349-E. STUDENTS WITH DISABILITIES.
349-F. ENGLISH LANGUAGE LEARNERS.
349-G. EXTENUATING CIRCUMSTANCES.
349-H. INDEPENDENT AUDIT.
349-I. STATE-WIDE SURVEY.

S 349-A. DEFINITIONS. AS USED IN THIS ARTICLE: 1. "TEST" OR "COMMON CORE STATE TEST" MEANS ANY STATE CREATED, DEVELOPED OR ADMINISTERED TEST GIVEN IN NEW YORK STATE TO STUDENTS IN ENGLISH LANGUAGE ARTS AND MATHEMATICS THAT TEST STUDENTS' KNOWLEDGE AND SKILLS RELATING TO COMMON CORE STANDARDS.

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

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2. "COMMON CORE" MEANS THE NEW YORK STATE P-12 COMMON CORE LEARNING STANDARDS (CCLS) FOR ENGLISH LANGUAGE ARTS AND MATHEMATICS ON WHICH NEW YORK STATE COMMON CORE TESTS WILL BE BASED.

3. "COMMISSIONER" MEANS THE COMMISSIONER OF EDUCATION OF THE STATE OF NEW YORK.

4. "TEST SUBJECT" MEANS ANY INDIVIDUAL TO WHOM A TEST IS ADMINISTERED.

5. "TEST AGENCY" MEANS ORGANIZATION, ASSOCIATION, CORPORATION, PARTNERSHIP OR INDIVIDUAL THAT DEVELOPS, SPONSORS OR ADMINISTERS A TEST PROVIDED HOWEVER THAT THE DEPARTMENT SHALL NOT BE INCLUDED WITHIN THE DEFINITION OF A TEST AGENCY FOR PURPOSES OF THIS ARTICLE.

6. "TEST YEAR" MEANS THE TWELVE-MONTH PERIOD COMMENCING SEPTEMBER FIRST DURING WHICH THE TEST AGENCY ADMINISTERS A PARTICULAR TEST.

7. "CHILD WITH A DISABILITY" OR A "STUDENT WITH A DISABILITY" SHALL BE DEFINED IN SECTION FORTY-FOUR HUNDRED ONE OF THIS CHAPTER.

8. "ENGLISH LANGUAGE LEARNER" MEANS A TEST SUBJECT WHOSE NATIVE LANGUAGE IS NOT ENGLISH.

9. "ANCHOR ITEMS" OR "LINKING ITEMS" MEANS ITEMS BASED ON THE SAME MATERIAL IN DIFFERENT FORMS ON A TEST OR MULTIPLE TESTS GIVEN IN THE SAME YEAR TO DIFFERENT GRADE LEVELS OR IN DIFFERENT YEARS TO THE SAME GRADE LEVEL THAT ARE SCALED IN SUCH A WAY TO ENSURE THAT A GIVEN SCORE REPRESENTS THE SAME LEVEL OF PERFORMANCE, REGARDLESS OF THE TEST FORM OR YEAR, THAT ARE USED TO LINK DIFFERENT FORMS OF A TEST AND EQUATE THEM; AND TO ENSURE THAT SUCH ITEMS REPRESENT A STABLE LEVEL OF DIFFICULTY OVER TIME.

10. "FIELD TEST ITEMS" MEANS UN-SCORED ITEMS THAT ARE USED TO GATHER DATA FOR USE ON FUTURE SCORED TESTS.

S 349-B. DISCLOSURE. 1. THIRTY DAYS AFTER THE ADMINISTRATION OF ANY COMMON CORE STATE TEST IN ENGLISH LANGUAGE ARTS AND MATHEMATICS GIVEN TO TEST SUBJECTS, FIFTY PERCENT OF THE TEST ITEMS, AFTER EXCLUDING ANCHOR ITEMS OR LINKING ITEMS, AND FIELD TEST ITEMS SHALL BE RELEASED TO THE PUBLIC.

2. AFTER THE SECOND YEAR OF ADMINISTRATION OF A COMMON CORE STATE TEST, FULL DISCLOSURE OF ALL TEST ITEMS THAT ARE THE BASIS FOR TEST SUBJECTS' SCORES, SHALL BE RELEASED TO THE PUBLIC. POSTING OF TEST ITEMS AND CORRECT ANSWERS ON THE DEPARTMENT'S WEBSITE SHALL CONSTITUTE FULL DISCLOSURE REQUIRED BY THIS SECTION.

S 349-C. REPORTING. THE COMMISSIONER, BEGINNING JULY FIRST, TWO THOUSAND FOURTEEN AND ANNUALLY THEREAFTER, SHALL REPORT TO THE GOVERNOR, THE SPEAKER OF THE ASSEMBLY, THE TEMPORARY PRESIDENT OF THE SENATE, THE CHAIR OF THE ASSEMBLY HIGHER EDUCATION COMMITTEE AND THE CHAIR OF THE SENATE HIGHER EDUCATION COMMITTEE ON: 1. THE EFFECTIVENESS OF COMMON CORE STATE TESTS IN ENHANCING STUDENT LEARNING AND PERFORMANCE;

2. THE FAIRNESS AND APPROPRIATENESS OF TEST ITEMS FOR EACH GRADE LEVEL, INCLUDING THE PERCENTAGE OF TEST ITEMS FOUND TO BE ABOVE GRADE LEVEL;

3. THE CORRELATION BETWEEN TEST SCORES AND GRADE POINT AVERAGES OF TEST SUBJECTS TAKING COMMON CORE STATE TESTS;

4. A STATISTICAL ANALYSIS OF STUDENT PERFORMANCE BASED ON SOCIOECONOMIC, GENDER, RACE AND ETHNICITY, AND REGIONAL FACTORS;

5. THE EFFECTIVENESS OF THE TEST AGENCY AS THE TEST DEVELOPMENT VENDOR; AND

6. FACTORS TO BE CONSIDERED IN DETERMINING WHETHER TO CONTINUE WITH THE CURRENT TEST AGENCY, OR OTHER VENDOR AS A TEST AGENCY, OR UTILIZE PARTNERSHIP FOR ASSESSMENT OF READINESS FOR COLLEGE AND CAREERS (PARCC) TESTS IN TWO THOUSAND FIFTEEN.

S 349-D. APPEALS PROCESS. THE COMMISSIONER SHALL DEVELOP GUIDELINES AND PROCEDURES FOR PARENTAL APPEALS OF TEST SUBJECTS' SCORES BASED ON CLEAR PROOF THAT SUCH TEST SUBJECTS' SCORES ARE NOT REFLECTIVE OF SUCH TEST SUBJECTS' ABILITIES. SUCH PROOF MAY INCLUDE BUT NOT BE LIMITED TO GRADES RECEIVED ON CLASSROOM WORK DURING THE TEST YEAR OR SCORES RECEIVED ON PAST COMMON CORE STATE TESTS GIVEN TO THE TEST SUBJECT IN PREVIOUS YEARS.

S 349-E. STUDENTS WITH DISABILITIES. STUDENTS WITH DISABILITIES SHALL BE PROVIDED WITH THE TESTING ACCOMMODATIONS SPECIFIED IN THEIR INDIVIDUAL EDUCATION PROGRAMS (IEPS) OR THEIR SECTION FIVE HUNDRED FOUR ACCOMMODATION PLANS (504 PLANS).

S 349-F. ENGLISH LANGUAGE LEARNERS. THE COMMISSIONER SHALL DEVELOP TESTING ACCOMMODATION GUIDELINES FOR ENGLISH LANGUAGE LEARNERS THAT MAY INCLUDE TIME EXTENSIONS, SEPARATE TEST LOCATIONS, TRANSLATED EDITIONS, BILINGUAL DICTIONARIES AND GLOSSARIES, ORAL TRANSLATIONS FOR LOWER-INCIDENT LANGUAGES AND WRITTEN RESPONSES IN NATIVE LANGUAGES.

S 349-G. EXTENUATING CIRCUMSTANCES. THE COMMISSIONER SHALL DEVELOP A PROCEDURE TO ALLOW A TEST SUBJECT TO RECEIVE A ONE-TIME WAIVER FROM TAKING A COMMON CORE STATE TEST BASED ON EXTENUATING CIRCUMSTANCES OR GOOD CAUSE SHOWN PURSUANT TO THE COMMISSIONER'S REGULATIONS.

S 349-H. INDEPENDENT AUDIT. NOT LATER THAN MAY FIRST, TWO THOUSAND FOURTEEN THE COMMISSIONER SHALL UNDERTAKE TO HAVE A COMPREHENSIVE INDEPENDENT AUDIT PERFORMED BY AN INDEPENDENT CONTRACTOR, NOT AFFILIATED WITH A TEST AGENCY. SUCH CONTRACTOR SHALL HAVE A BACKGROUND AND EXPERTISE IN EDUCATIONAL TESTING. THE AUDIT SHALL REVIEW AND EVALUATE THE COMMON CORE TESTING PROGRAM IN THE STATE. THE SCOPE OF THE AUDIT SHALL INCLUDE BUT NOT BE LIMITED TO TEST PREPARATION; WHETHER TESTS WERE FAIR, UNBIASED, PROPERLY PRE-TESTED AND GRADE APPROPRIATE, INCLUDING THE PERCENTAGE OF TEST ITEMS FOUND TO BE ABOVE GRADE LEVEL; WHETHER THE TESTS WERE PROPERLY ADMINISTERED AND SCORED; AND, HOW THE DEPARTMENT DEALT WITH TEACHER, STUDENT AND PARENT CONCERNS, COMPLAINTS AND APPEALS. SUCH AUDIT SHALL BE COMPLETED BY OCTOBER FIFTEENTH, TWO THOUSAND FOURTEEN AND A COPY SHALL BE TRANSMITTED TO THE GOVERNOR, THE TEMPORARY PRESIDENT OF THE SENATE, THE SPEAKER OF THE ASSEMBLY AND THE CHAIRS OF THE HIGHER EDUCATION COMMITTEES IN EACH HOUSE.

S 349-I. STATE-WIDE SURVEY. 1. THE COMMISSIONER SHALL CONDUCT A STATE-WIDE SURVEY OF SCHOOL ADMINISTRATORS, TEACHERS AND THE DEANS OF TEACHER EDUCATION AT NEW YORK STATE COLLEGES AND UNIVERSITIES RELATING TO THE AMOUNT OF TIME SPENT ON COMMON CORE STATE TEST PREPARATION AND THE IMPACT OF SUCH PREPARATION ON THE QUALITY OF INSTRUCTION. RESPONDENTS TO SUCH SURVEY MAY CHOOSE TO REMAIN ANONYMOUS. THE SURVEY SHALL INCLUDE, BUT NOT BE LIMITED TO QUESTIONS RELATED TO STUDENT AND TEACHER MORALE, TEST PREPARATION TIME AND THE IMPACT ON CURRICULUM, THE AMOUNT OF TIME TEACHERS SPEND ALIGNING CURRICULUM TO COMMON CORE STATE TESTS, THE OVERALL IMPACT TESTING HAS ON THE CLASSROOM ENVIRONMENT, THE EFFECTS THAT THE COMMON CORE TESTING PROGRAM IN NEW YORK STATE HAS ON THE ABILITY OF TEACHER EDUCATION PROGRAMS TO PLACE STUDENT TEACHERS IN SURROUNDING SCHOOL DISTRICTS, AND ANY OTHER RELEVANT QUESTIONS REGARDING THE IMPACT OF COMMON CORE STATE EXAMS, INCLUDING THE PERCENTAGE OF TEST ITEMS FOUND TO BE ABOVE GRADE LEVEL.

2. THIS SURVEY SHALL RESULT IN A REPORT BY THE DEPARTMENT THAT COMPILES THE DATA RECEIVED FROM THE SURVEY AND THAT DETAILS THE RESULTS AND PROVIDES CONCLUSIONS. SUCH REPORT SHALL BE SUBMITTED TO THE GOVERNOR, THE SPEAKER OF THE ASSEMBLY, THE TEMPORARY PRESIDENT OF THE SENATE, THE CHAIR OF THE ASSEMBLY HIGHER EDUCATION COMMITTEE AND THE CHAIR OF

THE SENATE HIGHER EDUCATION COMMITTEE BY DECEMBER THIRTY-FIRST, TWO THOUSAND THIRTEEN.

S 2. This act shall take effect immediately, provided that any rules or regulations necessary for the implementation of this act shall be promulgated and take effect 180 days after its enactment.