

# STATE OF NEW YORK

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2766

2017-2018 Regular Sessions

## IN ASSEMBLY

January 23, 2017

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Introduced by M. of A. PAULIN, ARROYO, BENEDETTO -- read once and referred to the Committee on Education

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 instru-  
9 ment 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 preced-  
13 ing 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  
19 from time to time, the joint standards), including pedagogic and curric-  
20 ular, as well as psychometric, standards.  
21 (ii) A technical manual for each assessment used by the department of  
22 education and used to determine a student's eligibility for a high  
23 school diploma, promotion to grade, or measurement of AYP of a school or

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

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1 district in the preceding school year. The technical manual must comply  
2 with the professional requirements of the assessment industry as recog-  
3 nized by the AERA, APA and NCME.

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

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

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

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

52 2. The board shall determine whether or not each assessment used by  
53 the department of education for graduation, promotion or determination  
54 of AYP is valid, reliable, aligned to the learning standards, and appro-  
55 priate for use. The board shall submit, not later than October fifteenth  
56 of each year, a written report of its findings to the state board of

1 regents, the temporary president of the senate and the speaker of the  
2 assembly. The report shall be made available to the public upon its  
3 submission as provided in this subdivision.

4 3. If the board determines that any part of an assessment used by the  
5 department of education does not meet the standards for validity, reli-  
6 ability, alignment to learning standards or appropriateness of use under  
7 the joint standards, such part or parts of those assessments shall be  
8 considered invalid, and the results from such assessment shall not be  
9 used to determine a student's eligibility for a high school diploma,  
10 promotion to grade, or measurement of AYP of a school or district in any  
11 school year. The commissioner of education shall substitute an alternate  
12 measure for the decision taken on the basis of the administered assess-  
13 ment. Where a decision to graduate or promote a student is based on an  
14 assessment not demonstrably valid, the decision will be based on a  
15 combination of final grade in the relevant academic courses and faculty  
16 recommendations in place of the results of such examination. The deter-  
17 mination of the board shall be final as to the use of those assessments.

18 4. If any part of an assessment used by the department of education  
19 has been determined by the board to fail to meet the joint standards and  
20 related research for assessment validity, reliability, alignment to  
21 learning standards or appropriateness of use, the commissioner of educa-  
22 tion shall not use such part or parts of the assessment in any subse-  
23 quent test administrations.

24 § 3. Pilot testing. 1. No later than sixty days prior to the depart-  
25 ment of education's scheduled administration of any assessment to deter-  
26 mine a student's eligibility for a high school diploma, promotion to  
27 grade, or measurement of AYP of a school or district in the preceding  
28 school year, the commissioner of education shall submit to the board,  
29 the state board of regents and the temporary president of the senate and  
30 the speaker of the assembly the results of all pilot and/or field tests  
31 conducted for that assessment and make available to the board all  
32 records relating to such pilot and/or field tests and results. Pilot  
33 and/or field tests are assessments administered by the department of  
34 education that are not being used for decisions of graduation, promotion  
35 to grade, or measurement of AYP but contain individual questions that  
36 are to be used on assessments to determine a student's eligibility for a  
37 high school diploma, promotion to grade, or measurement of AYP. For  
38 purposes of this section, results of pilot and/or field tests shall  
39 include, but not be limited to, analysis of answers to questions on the  
40 administered pilot and/or field test based on percentage answered  
41 correctly, breakdown of results according to race and gender, an expla-  
42 nation of how the pilot and/or field test was administered, and an  
43 explanation of the learning standard a question purports to test. The  
44 failure to submit and identify pilot and/or field test results or to  
45 provide access to records as required under this subdivision shall  
46 preclude the department of education from using or administering the  
47 assessment.

48 2. Where the board has received from the commissioner of education the  
49 results of the pilot and/or field test for an assessment as required  
50 under subdivision one of this section, the board shall, not later than  
51 thirty days prior to the department of education's scheduled adminis-  
52 tration of such assessment, deliver to the state board of regents and  
53 the temporary president of the senate and the speaker of the assembly a  
54 written report evaluating the pilot and/or field tests and the results  
55 of the pilot and/or field tests provided by the department of education.  
56 The written report of the board shall be made available to the public.

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

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