§ 342. Disclosure of test contents. 1. Within thirty days after the results of any standardized test are released, the test agency shall file or cause to be filed with the commissioner:

a. a copy of all test questions used in calculating the test subject's raw score;

b. the corresponding acceptable answers to those questions; and

c. all rules for converting raw scores into those scores reported to the test subject together with an explanation of such rules.

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, the test agency shall provide to the test subject the opportunity to secure:

a. a copy of the test questions used to calculate the test subject's raw score;

b. 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. 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. Notwithstanding any other provision in this section, a test agency shall permit a test subject to elect in writing 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) 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.

3. a. Notwithstanding subdivisions one and two of this section, a test agency may withhold from disclosure any test forms administered in New York in any given test program to not more than five percent of the anticipated test subjects annually or to not more than five thousand test subjects annually, whichever is less.

b. Prior to the beginning of a test agency's testing year, the test agency shall designate the dates upon which test forms to be filed with the commissioner will be used. The test agency shall inform potential test subjects of these dates.

4. Within three years after the administration in New York of a standardized test form not required to be disclosed under subdivision three of this section the test agency shall file the test form and the corresponding acceptable answers with the commissioner.

5. Subdivisions one, two, three, and four of this section shall not apply to the GRE Advanced Tests. With respect to such tests, the test agency shall file with the commissioner the following:

a. a copy of all test questions used in calculating the test subject's raw score from one test form administered during the period set forth below;

b. the corresponding acceptable answers; and

c. all rules for converting raw scores into those scores reported to the test subject together with an explanation of such rules, in accordance with the following schedule:

(1) once every three years for such test administered to forty thousand or more test subjects in New York annually, and

(2) once every five years for such tests administered to five thousand

or less than forty thousand test subjects in New York annually, and

(3) once every eight years for such tests administered to fewer than five thousand test subjects in New York annually.

5-a. Subdivisions one, two, three, four, five and six of this section shall not apply to the Medical College Admission Test. With respect to that test, the test agency shall file with the commissioner once every four years the following:

a. a copy of all test questions used in calculating the test subject's raw score from one test form administered during the previous four-year period;

b. the corresponding acceptable answers; and

c. all rules for converting raw scores into those scores reported to the test subject together with an explanation of such rules.

5-b. Subdivisions one, two, three, four, five, five-a and six of this section shall not apply to SAT Subject Tests. With respect to such tests, the test agency shall maintain on file with the commissioner a complete sample test, reflecting tests currently in use, of each type of SAT Subject Test to be administered in New York and provide to the test subject the opportunity to secure a copy of a representative complete sample test of a Subject Test. Whenever a new Subject Test is added the test agency shall file and publish updated information consisting of descriptions and sample items prior to the administration of any such test in New York. Whenever a substantial change is made in any subject, the test agency shall file and publish updated information consisting of complete sample tests prior to the administration of any such test in New York.

6. Notwithstanding other provisions of this section, if a test agency has administered a standardized test to less than two thousand test subjects in New York annually, the test agency shall file with the commissioner at least once every three years:

a. a copy of all test questions used in calculating the test subject's raw score from one test form administered during that three year period;

b. the corresponding acceptable answers with the commissioner; and

c. all rules for converting raw scores into those scores reported to the test subject together with an explanation of such rules.

7. Documents submitted to the commissioner pursuant to this section shall be public records and, in collecting this material, the State Education Department shall be considered an archive under Title 17 § 108 U.S.C.

8. a. Within sixty days of the receipt of correspondence from a test subject, their representative, or a user institution challenging or questioning the keying, scoring, wording, or any aspect of a test question or questions used to calculate test subjects' raw scores for standardized tests filed with the commissioner pursuant to subdivision one of this section, the test agency shall place such correspondence in a separately maintained file. Such filed correspondence must contain no information identifiable with any individual or user institution unless authorized by that individual or institution.

b. Within thirty days of the test agency's sending out a response to the test subject, their representative or the user institution, the test agency shall place on file a copy of any of the test agency's written responses to such correspondence clarifying, explaining or defending the test question or questions. Such filed responses must contain no information identifiable with any individual or user institution unless authorized by that individual or institution.

c. Test subjects and any other individual shall be able to gain access to such file by submitting a written request to the test agency. Test agencies shall make copies of any of the requested contents of the file. Test agencies may charge nominal fees to provide copies of any of the contents of the file upon request. Such fees may not exceed the direct costs of administering and maintaining such files and photocopying

requested materials.

9. Each test agency shall report the following information to the commissioner annually:

a. the dates of each test administered by the test agency during the testing year;

b. the total number of test subjects who took the test at each administration;

c. the total amount of fees received from test subjects by the test agency for the test for that testing year; and

d. those expenses which are directly attributable to the test and those expenses which are indirectly attributable to the test. The test agency shall also list expenses indirectly attributable to all activities of the test agency, including expenses not identifiable as attributable to a test.

10. a. Except as provided in paragraphs b, c, d and e of this subdivision, subdivisions one and two of this section shall not apply to any test agency which discloses test forms administered to at least two-thirds of the test subjects in a test year, based on the number of administrations in the most recent test year.

b. Subdivisions one, two, three, four and six of this section shall not apply to the SAT Test during the nineteen hundred ninety-six--ninety-seven test year or to the two thousand eighteen--two thousand nineteen test year so long as the College Entrance Examination Board discloses in each such testing year:

(i) four test forms used to administer the SAT Test in New York, or

(ii) if fewer than four regular SAT Test administrations are offered in New York during a test year, the same number of SAT Test forms as regular SAT Test administrations in New York in that test year.

b-1. Subdivisions one, two, three, four and six of this section shall

not apply to the SAT Test during the two thousand nineteen--two thousand twenty test year or any subsequent test year, so long as the college entrance examination board discloses in each such testing year:

(i) if seven or more regular SAT Test administrations are offered in New York during a test year, four SAT Test forms used to administer the SAT Test in New York;

(ii) if four, five or six regular SAT Test administrations are offered in New York during a test year, three SAT Test forms used to administer the SAT Test in New York; or

(iii) if three or fewer regular SAT Test administrations are offered in New York during a test year, the same number of SAT Test forms used to administer the SAT Test in New York.

b-2. Subdivisions one, two, three, four and six of this section shall not apply to the ACT college entrance examination during the two thousand nineteen--two thousand twenty test year or any subsequent test year, so long as the ACT college entrance examination board discloses in each such testing year:

(i) if seven or more regular ACT college entrance examinations test administrations are offered in New York during a test year, four ACT college entrance examinations test forms used to administer the ACT college entrance examination test in New York;

(ii) if four, five or six regular ACT college entrance examinations test administrations are offered in New York during a test year, three ACT college entrance examinations test forms used to administer the ACT college entrance examination test in New York; or

(iii) if three or fewer regular ACT college entrance examinations test administrations are offered in New York during a test year, the same number of ACT college entrance examination test forms as regular ACT college entrance examination test administrations in New York in that test year.

c. Subdivisions one, two, three, four, and six of this section shall not apply to the Graduate Record Examination ("GRE") General Test during the nineteen hundred ninety-six--ninety-seven test year so long as the Graduate Record Examinations Board discloses in that test year the greater of:

(i) one GRE General Test form administered in New York, or

(ii) one-half the number of GRE General Test forms administered in New York in that test year.

d. Subdivisions one, two, three, four, and six of this section shall not apply to the GRE General Test during the nineteen hundred ninety-seven--ninety-eight test year or any subsequent test year, so long as the Graduate Record Examinations Board discloses in each such test year one-half of the number of GRE General Test forms administered in regular administrations in New York in that test year if it offers at least two regular administrations of that test in New York in that test year.

e. Subdivisions one, two, three, four, and six of this section shall not apply to the Test of English as a Foreign Language ("TOEFL") during the nineteen hundred ninety-six--ninety-seven test year or any subsequent test year so long as the TOEFL Policy Council discloses in each such test year:

(i) five test forms used to administer the TOEFL in New York, or

(ii) if fewer than five regular TOEFL administrations are offered in New York during a test year, the same number of TOEFL forms as such regular administrations in New York during that test year.

f. Any test agency offering one or more nondisclosed administrations pursuant to this subdivision shall provide to test subjects, in a clear and conspicuous manner in its registration materials, notice of which test administrations will or will not be disclosed.

g. For the purposes of this subdivision, a "regular" administration means a regular Saturday major paper-and-pencil administration of the SAT I or GRE General Test or a regular Friday major paper-and-pencil administration of the TOEFL. A "regular" administration does not include any other administration (whether offered on a Friday or Saturday or otherwise), whether a makeup administration, an administration for Saturday Sabbath observers, or other special-purpose administration, or any individual administration.

11. Notwithstanding subdivision one of this section, a test agency which administered a computerized standardized test in test year nineteen hundred ninety-four shall file with the commissioner:

a. no later than September first, nineteen hundred ninety-six the test item pool used for an operational test administered as of December first, nineteen hundred ninety-four, and the corresponding acceptable answers.

b. no later than September first, nineteen hundred ninety-seven that portion of the test item pool used for an operational test administered during the nineteen hundred ninety-six test year equivalent to one paper-and-pencil test form, and the corresponding acceptable answers.

c. no later than September first, nineteen hundred ninety-eight that portion of the test item pool used for an operational test administered during the nineteen hundred ninety-seven test year equivalent to two paper-and-pencil test forms, and the corresponding acceptable answers.

d. no later than September first, nineteen hundred ninety-nine that portion of the test item pool used for an operational test administered during the nineteen hundred ninety-eight test year equivalent to six paper-and-pencil test forms, and the corresponding acceptable answers.