§ 344-b. Due process. Each test agency shall ensure due process protection of test subjects whose scores are being questioned for suspected inauthenticity or irregularity in test administration.

1. When a test agency is presented with information which renders the test subject's test score suspect, whether that information is in the form of allegations of collusion or cheating, or irregular test administration, or irregular statistical data, or any other form, the test agency is responsible for reviewing the information and determining if withholding the test subject's score is warranted.

2. If the test agency determines that withholding the test subject's score is warranted, the test agency shall give the test subject written notice of the test agency's decision. The notice shall be sent by registered mail not later than five working days after the test agency's decision.

3. The notice to the test subject shall include all of the following:

(a) a complete summary of the information submitted to the test agency and relied upon by the test agency to withhold the score;

(b) a complete summary of the pertinent facts surrounding the investigation;

(c) a statement of the test subject's right to receive, upon request, details supporting the complete summaries referred to in paragraphs (a) and (b) of this subdivision;

(d) the policies and procedures that were followed by the test agency in reviewing and rendering a decision to investigate the test score;

(e) the potential consequences which may result from the investigation, such as withholding or invalidating the test score;

(f) a summary of the information that may be submitted to the test agency by the test subject to support the authenticity of the test score; and

(g) a statement informing the test subject that the opportunity to respond to the notice will be afforded for not more than fifteen working days following the date the notice was delivered. No final decision on the question of suspected irregularity or inauthenticity shall be rendered by the test agency until the test subject under investigation

has responded, or the time for doing so has expired, whichever occurs first.

4. After the time period specified in paragraph (g) of subdivision three of this section has expired, the test agency shall review all of the evidence and shall make a good faith effort to render a decision regarding the authenticity of the score, within fifteen working days and notify the test subject immediately. No test agency shall cancel or invalidate a test subject's test scores on the basis of an alleged irregularity or inauthenticity unless, after all evidence has been considered by the test agency, substantial evidence resulting from an investigation conducted pursuant to this section supports the cancellation or invalidation.

5. When the test agency determines that substantial evidence exists to support cancellation or invalidation of a test score, the test agency shall provide the test subject with a choice of the following options:

(a) cancellation of the test scores in question, with full refund of all test fees;

(b) an opportunity to take the test again privately and without charge; or

(c) an opportunity to seek arbitration or judicial review of the matter.

6. The test subject shall have thirty days following receipt of the notice by registered mail to respond to the notice of inauthenticity or irregularity.

7. If the test subject responds to the notice of inauthenticity or irregularity of test scores sent by the test agency within the time period specified by subdivision six of this section, the test agency shall review the contents of the response and comply with one of the following:

(a) If the test subject requests cancellation of the test scores, a full refund of all test fees will be provided within a reasonable period.

(b) If the test subject requests an opportunity to take the test again

privately and without charge, the test agency shall make appropriate accommodations that are mutually agreed upon by the test agency and test subject so the test subject has sufficient time to prepare for the retest. The retest shall be given in a reasonable and timely manner. If the score on the retest is higher, the higher score shall be reported.

(c) Nothing in this section precludes the parties from seeking resolution of the testing problems by either judicial review or arbitration. The test agency and the test subject shall make a good faith effort to complete an arbitration process in no more than thirty days after the election of such option.

8. The test agency shall not release confidential information to any authorized test score recipients regarding a test subject under pending investigation, unless authorized to do so by the test subject.

9. The test agency shall immediately release the test score to the test subject and the test score recipients, if any, where substantial evidence does not exist to render the inauthenticity or irregularity of the test score.

10. The procedures prescribed in this section do not apply to instances where the cancellation of all test scores results from the complete disruption of the administration of the test, such as by natural disasters, national emergencies, inadequate or improper test conditions, answer sheet printing errors, or testing agency errors.

11. Time procedures described in this section shall not apply in those instances where test scores have already been reported to test score recipients.