

# Testing and Data Privacy Changes



Fact Sheet No. 14-11

April 2014

## Introduction

The 2014-15 state budget enacts into law several components of legislation related to state assessments and data privacy. These amendments direct the New York State Education Department (SED) to reduce the use of standardized tests. In addition to, the new law also restricts what type of data can be reported to external entities and ends the use of in-Bloom as a third-party vendor.

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## Students in kindergarten through second grade

Districts are prohibited from using traditional standardized tests for students in kindergarten through second grade.

- Traditional standardized assessments are defined by Commissioner's Regulations as a "systematic method of gathering information from objectively scored items that allow the test taker to select one or more of the given options or choices as their response." These can include multiple-choice, true-false, and matching items but is intended to cover assessments that require the student (and not the examiner/assessor) to directly use a "bubble" answer sheet.
- The law allows the use of performance-based assessments or any assessment in which the student performs "real-world tasks" that demonstrate knowledge and skills.
- For purposes of teacher evaluation, any standardized tests currently approved in a district plan will remain in effect until a new plan is negotiated. However, if a district requests any material change to their APPR, it will trigger a review of this component and districts will need to comply with the law.
- The New York State English as a Second Language Achievement Test (NYSESLAT) is required by federal law and not affected by this new law.

### **Grades three through eight ELA and mathematics assessments**

Student transcripts will not include the results of the grades three through eight ELA and mathematics assessments until December 31, 2018. Districts must notify parents that test results are not included in their student's permanent record but are being used for diagnostic purposes.

- Districts are expected to report the results to the state for district and school accountability purposes.
- Results may be used for promotion or placement decisions only if used as one of multiple measures and is not the primary factor. Districts must notify parents annually how placement decisions are made and how the policy was developed.

### **Students with disabilities and English language learners (ELL)**

Students with disabilities are to be given assessments that are appropriate for their instructional level rather than the current practice of using chronological age. ELLs will be given a state assessment that measures English language development of the student, rather than the current practice of using the state standardized ELA assessment after two years of enrollment. These changes are contingent upon receiving approval from the United States Department of Education. New York has applied for this waiver through the ESEA Waiver extension process.

### **Time devoted to testing**

Districts will need to document and report how much time is spent by subject and grade on standardized tests. Any new APPR submitted will include an assurance in the certification page signed by local presidents that confirms that no more than one percent of total instructional time will be spent taking standardized tests. This does not apply to formative, diagnostic, portfolio reviews or other performance-based assessments.

- Districts will be required to report to SED, and post on the district website, each standardized test administered by grade and subject and whether the assessment is required by federal law, state law or given at local discretion.
- State standardized assessments are not to exceed more than one percent of the minimum required annual instructional hours for the grade. Subjects/grades without a state assessment will not exceed, in the aggregate, one percent of the minimum required annual instructional hours.
- Test preparation will not exceed two percent of instructional time.
- SED has released a Q&A titled *Certifying Instruction Time* that helps to define what is included in this one percent and suggestions for calculating the time on tests.  
<http://www.engageny.org/resource/guidance-on-the-approved-regulatory-amendments-to-appr-to-help-reduce-local-testing>

## Testing transparency

SED is required to provide “significantly” more sample questions than were provided after the 2012-13 administration and provide student assessment data “promptly” to teachers. The new law does not specify a number or percent of questions to be released and “promptly” is not defined.

## Data Privacy

SED is prohibited from submitting personally identifiable student data to any entity that collects, stores, organizes or aggregates student information for purposes of providing student data to a data dashboard operator. The law refers to these entities as “Shared Learning Infrastructure Service Provider” or “SLISP”. in-Bloom is considered a SLISP as defined by the law. As a result, SED has terminated in-Bloom’s contract and will return to building upon the Regional Information Centers (RIC) infrastructure operated by BOCES.

- Districts may submit student data to BOCES and RICs operated by BOCES.
- The law also applies to personally identifiable teacher or principal evaluation data.
- Personally identifiable student information includes: juvenile delinquency records, criminal records, medical and health records, and student biometric information.
- Districts are permitted to contract with third-party vendors for district operations and educational purposes but must ensure that there is a data security and privacy plan in place that adheres to the law. The law includes financial penalties for violations by any third-party vendor.
- Districts are required to publish a parent Bill of Rights for Data Privacy and Security that includes: a list of all student data elements collected by the state, safeguards used to protect student data, parental right to inspect and review contents of their child’s education record, and confirmation that these data are not used for any commercial purposes and where to address any complaints.