

PUBLIC NOTICE

EDUCATION

STATE BOARD OF EDUCATION

Notice of Action on Petition for Rulemaking

Standards and Assessment

N.J.A.C. 6A:8-1.1, Purpose

N.J.A.C. 6A:8-1.2, Scope

N.J.A.C. 6A:8-1.3, Definitions

N.J.A.C. 6A:8-4.1, Statewide assessment system

Propose N.J.A.C. 6A:8-6, Opting Out of Standardized Testing

Petitioners: Tova Felder, Andrew Pfaff, Gabrielle Alstadter, Michelle Thomas, and Sharon Smith.

Take notice that on February 20, 2015, the New Jersey State Board of Education received a petition for rulemaking from the above petitioners requesting that the Department of Education adopt amendments to N.J.A.C. 6A:8-1.1, 1.2, 1.3, and 4.1, and establish a new subchapter, N.J.A.C. 6A:8-6, Opting Out of Standardized Testing. The proposed amendments would establish a uniform rule to opt out of taking standardized tests and establish a requirement to provide information regarding the usefulness of data derived from standardized assessments.

To address the reliable and appropriate use of standardized testing results, petitioners request the following amendments to existing regulations in Chapter 8: (1) standardized assessments are to be one of many factors in measuring student progress; (2) standardized assessments are to be one

of many factors in evaluating schools and school districts; (3) the release of test results should be accompanied by a report setting forth expert opinions regarding the usefulness of the data derived from standardized assessments; (4) creating a definition for “standardized test” and “standardized test preparation;” and (5) creating a provision to opt out of standardized testing in compliance with the requested new subchapter. In addition, to address the alleged ambiguity regarding opting out of standardized testing, as well as inconsistent implementation by school districts across the State, petitioners request the addition of a new subchapter creating a uniform process for opting out of Statewide testing.

To fully consider petitioners’ request, the Department referred the matter for further deliberations to review current school district practice and procedure regarding student refusal in light of the change to testing procedures under the Partnership for Assessment of Readiness for College and Careers (PARCC), participation rates from the spring 2015 test administration, and compliance with Federal law. This notice of action was filed with the Office of Administrative Law on March 31, 2015. As set forth in the notice, the Department considered student participation rates from the spring 2015 administration of PARCC, along with school district procedures for dealing with student refusals and Federal law, to determine whether the adoption of a uniform policy through regulation is advisable.

In accordance with the review of this information and applicable Federal law, the Department concluded that current State law and regulations sufficiently set forth the appropriate use of standardized test results, specifically how standardized assessments are used for measuring both student and district progress. In regards to a uniform opt out policy, the Department concluded

that both Federal and State law require the Department to administer a Statewide assessment system for the purpose of improving educational outcomes, closing achievement gaps among subgroups of historically underserved students, increasing equity, and improving instruction. Establishing a uniform policy for parental refusal would be contrary to these legal mandates. As this is an area that is frequently evolving, policies and procedures for student participation in Statewide assessments is inappropriate for rulemaking as the Department must have the flexibility to issue and update guidance to school districts in consideration of best practices.

I. Requested Amendments to N.J.A.C. 6A:8-1.1, 1.2, 1.3, and 4.1

The Department disagrees with petitioners that amendments to the above provisions of Chapter 8 are necessary to ensure the appropriate use of standardized test results.

Current regulations regarding student assessments do not require Statewide assessments to be the only measure of student progress. In fact, the Department has counseled school districts to utilize student data from their assessment programs as only one indicator among others in making decisions that impact students, such as student-level placement and retention decisions. The primary Federal law governing academic standards and the administration of student assessments, the Elementary and Secondary Education Act (ESEA), as reauthorized by the No Child Left Behind Act of 2001 (NCLB), also require State assessments “be used for purposes for which they are valid and reliable and be consistent with relevant, nationally recognized professional and technical standards.” 34 CFR 200.2(b)(5). Department regulations regarding curriculum and instruction specify that *district boards of education* are responsible for assessing

the progress of all students in developing the knowledge and skills specified by the Core Curriculum Content Standards, including all content areas not included in the Statewide assessment program. Teacher-developed tests and quizzes and districtwide assessments are the main tools for assessing student progress, not Statewide assessments.

Similarly, Statewide assessments are not the only factor in evaluating district boards of education or schools. A variety of measures are used by the Department to evaluate the performance of school districts, including the New Jersey Quality Single Accountability Continuum - or QSAC - and school performance reports. Statewide assessments are also only a small component of the teacher evaluation system, whereas teacher observations and teacher-developed goals make up the majority of a teacher's summative rating.

In regards to the remaining requests for amendments, the Department believes it is premature at this time to revise the rules as the final report of the Study Commission on the Use of Student Assessments in New Jersey (the "Study Commission") is still pending. The Study Commission is a nine-member body created via Executive Order No. 159, charged with presenting recommendations regarding the quality and effectiveness of student assessments administered to students in kindergarten through grade 12. The Study Commission will consider and make recommendations on the volume, frequency, and impact of student assessments occurring throughout New Jersey school districts. Upon receipt of the final report, the Department will consider making revisions to these rules to address the type, volume, and quality of student assessments, including the Statewide assessment program and the definition thereof.

II. Requested New Rule for a Uniform Opt Out Policy

The Department disagrees with petitioners that a uniform rule defining the right of a parent or guardian to opt out of standardized tests is necessary to address an alleged ambiguity in existing guidance, as well as the different implementation by school districts across the State.

State law requires, at N.J.S.A. 18A:7C-1, the Commissioner of Education, with approval of the State Board, to develop and administer a Statewide assessment test in reading, writing, and computational skills. This statute is in alignment with Federal law requiring the administration of a Statewide assessment program to measure accountability and monitor statewide academic achievement. The ESEA requires State educational agencies that receive funds under Title I, Part A of the ESEA to implement in each local educational agency (LEA) a set of high-quality, yearly academic assessments that includes, at a minimum, assessments in mathematics, reading or language arts, and science. As such, and since the 2005-2006 school year, states have been required to administer both English language arts and mathematics assessments in grades three through eight and in high school. Beginning with the 2007-08 academic year, states have also been required to administer a science assessment at least once in grades three through five, grades six through eight, and in high school.

In addition, the ESEA requires State assessments to provide for the participation of all students in the tested grades and sets forth specific participation requirements, requiring school districts and states to test at least 95 percent of all students in the required grades and academic areas, and 95 percent of each required subgroup. Most importantly, the U.S. Department of Education has

clearly stated that the State and LEAs must provide for the participation of all students on the assessments and does not permit certain students or a specific percentage of students to be excluded from the assessments.

Failure to comply with ESEA's assessment and participation provisions could jeopardize more than \$800 million in Federal funding for New Jersey schools. Almost all Federal programs require the Department to submit student assessment data in an aggregate manner to allow the U.S. Department of Education to monitor how effectively New Jersey is serving special populations, such as Limited English Proficient students, special education students, homeless students, and career and technical education students, among others. If the Department or an LEA refuses to implement an assessment system that meets the statutory and regulatory requirements of the ESEA, the U.S. Department of Education could seek to withhold programmatic funds from either the State or from the LEA.

Developing a regulation regarding parental refusals would be in violation of the Department's obligations under both Federal and State law to administer a Statewide assessment program to all students. However, the Department will review issuing guidance to school districts in consideration of best practices regarding student participation.