



## Frequently Asked Questions — Maintaining and Sharing Records of Student Grades 3-8 ELA and Mathematics State Standardized Test Scores

Updated April 2019

### Overview

Provisions of the Common Core Implementation Reform Act,<sup>1</sup> NYS Education Law §305(45) and (46), and SED's implementing regulations,<sup>2</sup> prohibit school districts and BOCES from including a student's individual scores on a State administered standardized English language arts (ELA) or mathematics assessment for grades 3 through 8 on the student's transcript and maintaining these scores in the student's permanent record, and require parental notice to that effect. Education Law §305(45), which requires the Commissioner to prohibit the placement or inclusion of such test scores in a student's transcript or permanent record, explicitly provides that nothing in that subdivision shall be construed to interfere with required state or federal reporting or to excuse a school district or BOCES from maintaining or transferring records of such test scores separately from the student's permanent record. Education Law §305(46) requires that any such test results sent to parents or persons in parental relation to a student include a clear and conspicuous notice that the results will not be included on the student's official transcript or in the student's permanent record, and are being provided to the student and parents for diagnostic purposes. In April 2019, the Board of Regents gave final approval to revisions to Commissioner's regulations §104.3, making these provisions permanent.

### Purpose of Guidance

Following these legislative and regulatory changes, the Department has received several questions related to the ban on the inclusion of grades 3-8 State administered ELA and mathematics test scores in transcripts and student permanent records, as well as inquiries regarding the Department's requirements for sharing test results with parents and other educational agencies. This document is designed to help educational agencies understand and implement these new provisions of law. Because these legal requirements may implicate other legal obligations for school districts and BOCES, district and BOCES personnel are encouraged to consult with local counsel concerning the questions discussed below, when necessary.<sup>3</sup>

<sup>1</sup> Chapter 56 of the Laws of 2014, Part AA, Subpart B as amended by Section 35 of Part CCC of Chapter 59 of the Laws of 2018 and Section 30 of Part YYY of the 2019-2020 Enacted State Budget [S.1509-C/A.2009-C].

<sup>2</sup> Section 104.3 of the Regulations of the Commissioner of Education.

<sup>3</sup> For example, to the extent personally identifiable information or specified student data is disclosed to third parties, school districts and BOCES should also consider the legal requirements governing student data privacy and security contained in the Family Educational Rights and Privacy Act ("FERPA").

## Maintenance of Individual Student Test Scores

**Question:** May a school district or BOCES upload and maintain individual student scores on grades 3-8 State administered standardized ELA or mathematics assessments on a student management system (SMS) or other electronic database?

**Answer:** School districts and BOCES must keep a student's individual scores on a grade 3-8 State administered standardized ELA or mathematics assessment in a record separate from the student's transcript and "permanent record," and must have such test scores available for required state and federal reporting.<sup>4</sup> Education Law §305(45) does not define what is meant by a student's "permanent record," and the term is not defined elsewhere in the Education Law. However, the statute is clear that these student test scores must be maintained separately from the student's "permanent record" and must be available for required state and federal reporting. The Department's Records Retention and Disposition Schedule ED-1 for school districts and BOCES does not define a student's "permanent record" as such, though it does refer to a student cumulative achievement record equivalent that is sometimes known as the "Permanent Record Card." See, ED-1, 1.[275]a. Under ED-1, 1.[275]a, a student's permanent record card includes the "grades received from examination," which means that a student's rating on the grade 3 through 8 ELA and math assessments must be retained permanently. Under Education Law §305(45), a student's individual test scores on such assessments must be maintained separately, so the effect of that new statute is to prohibit the inclusion of such test scores (or consistent with the legislative intent, whether the student performed at level 1, 2, 3 or 4) with the student's permanent record card, together with other information relating to the student's cumulative academic performance, such as information on school entry, withdrawal and graduation, subjects taken and grades received. In other words, the permanent record card, which is the record used to generate a student's transcript, may not, during the period of prohibition, include the student's scores on the grade 3 through 8 State administered ELA or math assessments.

The Department sees no legislative prohibition against maintaining individual student test scores on grades 3-8 State administered standardized ELA and mathematics assessments on a student management system (SMS) that contains other information about students. The individual student scores for the student for these specified examinations must be maintained in a separate file, distinct from the transcript and permanent record information that the school district or BOCES would issue for the student to third parties outside of the school district or BOCES.

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<sup>4</sup> For example, under the America Competes Act, 20 U.S.C. §9871, the required elements for a P-12 data system include yearly test records of individual students with respect to federally required assessments and student-level transcript information, including information on courses completed and grades earned.

## Score Reports and Sharing of Test Scores

**Question:** Is there a requirement that Score Reports be mailed to parents and guardians?

**Answer:** The information contained in a student's Score Report must be made available to the student's parent/guardian as soon as practical after the school has received the Score Report. The information may be mailed or delivered electronically.

**Question:** Is it permissible to make Score Reports available to parents by posting them on a secure parent portal account assigned to each student and available only to that student's parents/guardians?

**Answer:** The Score Reports can be transmitted electronically to parents through a secure, individualized communication or posting. If this form of communication is selected, the scores must be maintained separately from the student's official transcript or permanent record, in accordance with Education Law §305(45). In addition, the communication must include "a clear and conspicuous notice that [the test] results will not be included on the student's official transcript or in the student's permanent record and are being provided to the student and parents for diagnostic purposes," in accordance with Education Law §305(46). Appropriate legal safeguards must be taken if this form of communicating scores to parents/guardians is used to ensure that the confidentiality of student data is maintained, consistent with FERPA and any other applicable federal or state privacy laws.

**Question:** May a school or BOCES use a third-party contractor in connection with the issuance of Score Reports?

**Answer:** An educational agency may utilize a contractor to issue Score Reports. If personally identifiable information or other specified student data is provided to the third party contractor, the contracting educational agency should be sure to fully conform to the data privacy requirements of FERPA and Education Law Section 2-d.

**Question:** Can individual student test scores on grades 3-8 State administered standardized ELA and mathematics assessments be shared with another school district or BOCES when a student seeks to transfer?

**Answer:** Under Education Law §305(45), individual student test scores on grades 3-8 State administered standardized ELA and mathematics assessments must be included in the transfer of records when a student enrolls in another school district or BOCES. However, the transferring school district or BOCES must transfer the individual test scores separately from the transcript and the permanent record of the student. It is permissible to send the grades 3-8 data and the transcript data in the same transfer, but as two separate files or attachments.

## **Applicability of Test Score Maintenance and Sharing Requirements**

**Question:** Are non-public schools bound by the legal requirements concerning the maintenance and sharing of grades 3-8 State administered standardized ELA and mathematics assessments?

**Answer:** No. Education Law §305(45) very explicitly prohibits “school districts and boards of cooperative educational services” from including individual student test scores on the State ELA and math assessments in student transcripts and permanent records, and makes no reference to non-public elementary or secondary schools. There is no basis in the statute to extend its requirements to entities other than school districts or BOCES.

**Question:** Do the new legal provisions apply to BOCES Regional Information Centers (RICs) when they are collecting data for required State reporting?

**Answer:** The BOCES RICs collect and store data on behalf of the State Education Department to help carry out state and federal reporting requirements. Education Law §305(45) explicitly states that the ban on commingling individual student scores on grades 3-8 State administered standardized ELA or mathematics assessments with student transcripts and permanent records should not be construed to interfere with required state or federal reporting. In carrying out those state and federal reporting requirements with respect to student data from school districts, the RICs have taken measures to keep the grades 3 through 8 State test scores separate from other student data records, consistent with the spirit and intent of Education Law §305(45).