

AMENDMENT TO THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to sections 207, 225 and 305 of the Education Law and section 75-b of the Civil Service Law.

1. Section 102.4 of the Regulations of the Commissioner of Education is amended, effective May 14, 2014, to read as follows:

Section 102.4. Fraud in examinations.

(a) Prohibited Student Fraud. If, in the judgment of the principal responsible for administration of an examination under the authority of the Regents, upon the basis of evidence deemed by him to be sufficient, a student has been found guilty of having committed or attempted to commit fraud in the examination, the principal shall be authorized to cancel the examination and to exclude this student from any subsequent Regents examination until such time as the student has demonstrated by exemplary conduct and citizenship, to the satisfaction of the principal, that the student is entitled to restoration of this privilege. As used in this [section] subdivision, fraud shall include the use of unfair means to pass an examination, giving aid to, or obtaining aid from, another person in any examination, alteration of any Regents passcard or other credential, and intentional misrepresentation in connection with examinations or credentials. Before such penalty shall be applied, the student accused of fraud shall be given an opportunity to make satisfactory explanations, including the right to appear before the board of education or a person or persons designated by such board, together with his parent or parents and, if so desired by the parent or parents, an attorney, all of whom shall be given the opportunity to ask questions of the examiner or examiners and any other person having direct personal knowledge of the facts. The board of education or

the person or persons designated by the board for the purpose of such inquiry may affirm, modify or reverse the findings or penalty, if any, imposed by the principal. The principal shall report promptly to the commissioner the name of each student penalized under this regulation, together with a brief description of circumstances.

(b) Prohibited Testing Misconduct. Testing misconduct, assisting in the engagement of, or soliciting another to engage in testing misconduct, and/or the knowing failure to report testing misconduct in accordance with subdivision (d) of this section when committed by an employee of a school district, board of cooperative educational services or charter school in a position for which a teaching or school leader certificate is required, shall be deemed to raise a reasonable question of moral character under Part 83 of this Title and shall be subject to referral to the Office of School Personnel Review and Accountability at the State Education Department to the extent provided in Section 83.1 of this Title. Each school district, board of cooperative educational services or charter school employee in a position for which a teaching or school leader certificate is not required who commits an unlawful act in respect to examination and records that is prohibited by Education Law §225 shall be subject to disciplinary action by the board of education, the board of cooperative educational services or charter school in accordance with subdivision 11 of Education Law §225.

(c). For purposes of this section, testing misconduct shall include, but need not be limited to, the following acts or omissions:

(1) Accessing secure test booklets and/or answer sheets prior to the time allowed by New York State testing rules;

(2) Duplicating, reproducing, or keeping any part of any secure examination materials without obtaining prior written authorization from the State Education

Department;

(3) Reviewing test booklets prior to test administration in order to:

(i) determine and record correct responses for use during testing;

(ii) create pre-test lessons or discussions with students about concepts being tested; and/or

(iii) create a “cheat sheet” for students to use during any State assessment, including but not limited to, sharing formulas, concepts, or definitions, necessary for the test;

(4) Providing students clues or answers during test administration, including, but not limited to, one or more of the following actions:

(i) coaching students about correct answers;

(ii) defining terms and concepts contained in the test;

(iii) pointing out wrong answers to a student and suggesting that the student reconsider or change the recorded response;

(iv) reminding students during testing of concepts they learned in class; and/or

(v) making facial or other non-verbal suggestions regarding answers.

(5) Allowing any student more time to take an examination than is allowed for that student;

(6) Leaving any materials displayed in the room containing topics being tested;

(7) Writing test specific formulas, concepts, or definitions on the board prior to and while a State assessment is administered;

(8) Reviewing a student answer sheet for wrong answers and returning it to a student with instructions to change or reconsider wrong responses;

(9) Altering, erasing, or in any other way changing a student's recorded responses after the student has handed in his/her test materials; or

(10) Rescoring portions of the test solely to add or find points so a student will pass the test or earn a higher score on the test, other than legitimate rescoring activities authorized by the superintendent of a public school district or chief administrative officer of a nonpublic or charter school or by the State Education Department; and/or

(11) Encouraging or assisting an individual to engage in the conduct described in paragraphs (1) through (10) of this subdivision.

(d) Mandatory Reporting of Testing Misconduct. Each school district, board of cooperative educational services or charter school employee shall be required to report to the Department any known incident of testing misconduct by a certified educator or any known conduct by a non-certified individual involved in the handling, administration or scoring of State assessments that may reasonably be considered to be in violation of section 225 of the Education Law, in accordance with directions and procedures established by the Commissioner for the purpose of maintaining the security and confidential integrity of State assessments.

(e) Prohibition Against Taking Adverse Action Against Certain Employees for Filing a Report. In accordance with section 75-b of the Civil Service Law, a school district or board of cooperative educational services shall not dismiss or take other disciplinary or adverse action against an employee because he/she submitted a report pursuant to subdivision (d) of this section. Any such adverse action by an individual

holding a teaching or school leader certificate shall be deemed to raise a reasonable question of moral character under Part 83 of this Title and may be referred to the Office of School Personnel Review and Accountability at the State Education Department.