

OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION

ADVANCED NOTICE OF PROPOSED RULEMAKING

This Advanced Notice of Proposed rulemaking (ANPR) is being published to provide stakeholders an opportunity to send comments to the Office of the State Superintendent of Education prior to formal publication of the Notice of Proposed Rulemaking.

*As noted below, the purpose of this rulemaking is to set forth the minimum requirements to protect the integrity of the statewide assessments and to ensure that results are accurate and meaningful. **The opportunity to comment on this advance notice of proposed rulemaking ends on August 21, 2019.** A Notice of Proposed Rulemaking will be published in the District of Columbia Register thereafter, providing further opportunity for public comment prior to final adoption of the rules. All comments received will be taken into consideration as part of the proposed rulemaking process prior to final adoption of these rules. In addition, final rulemaking action will not be taken until the later of thirty (30) days after the date of publication of the Notice of Proposed Rulemaking in the D.C. Register and Council of the District of Columbia approval of the proposed rulemaking.*

The State Superintendent of Education, pursuant to the authority set forth in subsections 3(b)(11), (15) and (20), and section 7d of the State Education Office Establishment Act of 2000, as amended, effective October 21, 2000 (D.C. Law 13-176, D.C. Official Code §§ 38-2602(b)(11), (15), and (2), and 38-2610(a) (2012 Repl. and 2018 Supp.)); section 106 of the Testing Integrity Act of 2013, effective October 17, 2013 (D.C. Law 20-27; D.C. Official Code § 38-771.06) (2012 Repl. and 2018 Supp.)); and Mayor's Order 2018-91, issued on November 15, 2018, hereby gives notice of her intent to establish a new Chapter 23 (Statewide Assessments) in Title 5 (Education), Subtitle A (Office of the State Superintendent of Education), of the District of Columbia Municipal Regulations (DCMR).

In order to measure and report the achievement of students and performance of schools in the District of Columbia, the Office of the State Superintendent of Education (OSSE) must administer statewide assessments. Pursuant to the District of Columbia Public Education Reform Act of 2007, effective June 12, 2007 (D.C. Law 17-9; D.C. Official Code § 38-1800 et seq.), OSSE serves as the state education agency (SEA) and performs the functions of an SEA for the District of Columbia under applicable federal law, including grant-making, oversight, and state functions for standards, assessments, and federal accountability requirements for elementary and secondary education.

The purpose of this rulemaking is to set forth the minimum requirements to protect the integrity of the statewide assessments and to ensure that results are accurate and meaningful. OSSE's goal is for schools and LEAs to deliver a uniform and equitable statewide assessment program. For assessments to yield fair and accurate results, the assessments must be administered in consistent and standardized conditions, and the best way to ensure that occurs is to ensure all teachers and administrators understand and recognize acceptable and unacceptable assessment practices and protocols.

Additionally, the purpose of this rulemaking is to establish process for conducting investigations in the instance of unacceptable assessment practices and protocols. This rulemaking will be used to determine whether a violation occurred, the issuance of sanctions for violations, and the seeking of review of OSSE's findings of both non-sanctionable and sanctionable violations.

This proposed rulemaking will be submitted to the Council of the District of Columbia for a fourteen (14) day review period or Council approval before final adoption, pursuant to the section 7(a) of the Child Development Facilities Regulation Act of 1998, effective April 13, 1999 (D.C. Law 12-215; D.C. Official Code § 7-2036(a)). The State Superintendent of Education also hereby gives notice of the intent to take final rulemaking action to adopt these proposed rules in not less than thirty (30) days after the publication of this notice in the D.C. Register

Chapter 23 (State-wide Academic Assessments) of Title 5-A (Office of the State Superintendent of Education) of the District of Columbia Municipal Regulations (DCMR) is amended by adding the following new sections:

- 2303 TESTING INTEGRITY AND SECURITY: GENERAL PROVISIONS AND APPLICABILITY
- 2304 TESTING INTEGRITY AND SECURITY: *PRIOR* TO ADMINISTRATION OF STATEWIDE ASSESSMENTS
- 2305 TESTING INTEGRITY AND SECURITY: TEST SECURITY PLANS
- 2306 TESTING INTEGRITY AND SECURITY: *DURING* ADMINISTRATION OF STATEWIDE ASSESSMENTS
- 2307 TESTING INTEGRITY AND SECURITY: EXCEPTIONS OR SPECIAL CIRCUMSTANCES DURING ADMINISTRATION OF STATEWIDE ASSESSMENTS
- 2308 TESTING INTEGRITY AND SECURITY: *AFTER* ADMINISTRATION OF STATEWIDE ASSESSMENTS
- 2309 TESTING INTEGRITY AND SECURITY: RECORD KEEPING
- 2310 TESTING INTEGRITY AND SECURITY: TRAINING AND TECHNICAL ASSISTANCE; MONITORING
- 2311 TESTING INTEGRITY AND SECURITY: REQUIRED REPORTING
- 2312 TESTING INTEGRITY AND SECURITY: VIOLATIONS
- 2313 TESTING INTEGRITY AND SECURITY: INVESTIGATIONS
- 2314 TESTING INTEGRITY AND SECURITY: INVESTIGATION PROCESS
- 2315 TESTING INTEGRITY AND SECURITY: CONSEQUENCES OF VIOLATIONS
- 2316 TESTING INTEGRITY AND SECURITY: RECONSIDERATION OF A FINDING OF NON-SANCTIONABLE VIOLATION
- 2317 TESTING INTEGRITY AND SECURITY: ADMINISTRATIVE REVIEW OF A FINDING SANCTIONABLE VIOLATION
- 2399 DEFINITIONS

Add the following new sections to Chapter 23 (Statewide Academic Assessments) of Title 5-A (Office of the State Superintendent of Education) of the DCMR to read as follows:

2303 TESTING INTEGRITY AND SECURITY: GENERAL PROVISIONS AND APPLICABILITY

- 2303.1 Pursuant to the Testing Integrity Act of 2013, effective October 17, 2013 (D.C. Law 20-27; D.C. Official Code §§ 38-771.01 *et seq.* and 38-2602(b)(20), the Office of the State Superintendent of Education (“OSSE”) shall administer and enforce this Chapter to protect the integrity of the statewide assessments and to ensure that results are accurate and meaningful.
- 2303.2 The requirements set forth in this Chapter shall apply to the following:
- (a) Local education agency (LEA);
 - (b) All District of Columbia public and public charter schools;
 - (c) Each statewide assessment administered pursuant to Section 2301;
 - (d) All students in an assessed grade range, including eligible students currently receiving education services in a nonpublic school setting; and
 - (e) Any individual designated by an LEA as authorized personnel.
- 2303.3 All assessment instruments included in the statewide assessment program are considered secure, and the contents of these tests, including student information used or obtained in their administration, are confidential. Unauthorized access to secure test materials shall be prohibited at all times.
- 2303.4 Authorized personnel, a school, and an LEA shall comply with the requirements set forth in this Chapter throughout the administration of a statewide assessment, including prior to, during, and after the administration of any statewide assessment, and as follows:
- (a) All secure test materials, including all testing materials used to facilitate paper- and computer-based testing, shall be secured under lock and key, or under secured, password-protected electronic access, unless another equivalent security measure for electronic secure test materials is utilized;
 - (b) An inventory of all secure test materials shall be maintained;
 - (c) Obtain, securely maintain and securely distribute testing material;
 - (d) Prohibit the unauthorized access to secure testing materials at all times;
 - (e) Complying with each assessment’s specific requirements for chain of custody and handling secure materials in the test vendor administration manuals for statewide assessments, as applicable and set forth in OSSE’s annual test security guidelines issued pursuant to § 2304.1; and

- (f) Cooperate and participate in any OSSE investigation pursuant to § 2313.

2303.5 If a conflict exists between a general requirement set forth in this chapter, and a specific requirement set forth in guidance to implement this chapter applicable, the specific requirement shall apply.

**2304 TESTING INTEGRITY AND SECURITY: *PRIOR* TO THE
ADMINISTRATION OF STATEWIDE ASSESSMENTS**

2304.1 Pursuant to D.C. Official Code § 38-2602(b)(20), OSSE shall annually release test security guidelines that may expand on any requirements set forth in this Chapter, including:

- (a) Updates to test administration requirements based on statewide assessments administered during that school year;
- (b) Changes to procedures or requirements to secure test materials are securely maintained and distributed;
- (c) Changes to procedures or requirements to ensure statewide assessments are administered in with fidelity and in consistent and standardized conditions; and
- (d) Provide lists of prohibited or unapproved electronic devices and materials or references.

2304.2 An LEA shall submit the testing schedule for all statewide assessments to OSSE no later than six (6) weeks prior to commencing the first administration of a statewide assessment.

2304.3 Beginning in the 2020-2021 school year, an LEA shall report the following to OSSE by October 1 of the same school year:

- (a) The LEA test integrity coordinator(s); and
- (b) School test windows for each statewide assessment.

2304.4 An LEA shall identify and designate staff members to serve in the following authorized personnel roles with responsibilities as specified below:

- (a) One LEA test integrity coordinator for all for the administration of all assessments, or no more than three LEA test integrity coordinators for each administration of a statewide assessment, that is responsible for testing integrity and security for the LEA in its entirety during the administration of a statewide assessment and who supervise all of the LEA's test monitors, test administrators, and proctors;

- (b) No more than three school test monitor(s) for each school or campus under the LEA's control that is responsible for creating and implementing all aspects of the school test security plan before, during, and after the statewide assessment at the school or campus site; and for coordinating security, maintaining data integrity within their school or campus, and training all authorized personnel at that site;
- (c) An LEA technology coordinator to support the LEA in appropriately implementing computer-based testing by preparing the testing platform and the student and test administrator devices for testing;
- (d) An LEA special populations coordinator to support the LEA in appropriately implementing accommodations and accessibility features have access to those accommodations and features on all applicable statewide assessments, and to provide training to authorized personnel tasked with providing those accommodations and features to students; and
- (e) Nonpublic school test monitor, as applicable, that is responsible for creating and submitting a school test plan for that site and collaborating with LEA test integrity coordinator(s) at each LEA for which the placement serves students to ensure statewide assessments are administered in compliance with all applicable federal and DC laws and regulations.

2304.5 An LEA may also designate school-based staff members to serve in the following authorized personnel roles with responsibilities as specified below:

- (a) Test Administrator(s) who are responsible for administering the statewide assessment to students, must comply with all the responsibilities and prohibitions of authorized personnel, and must perform all duties assigned by the school test monitor
- (b) Test proctor(s) who are under the constant and consistent direct supervision of a test administrator or school test monitor could be volunteers, contractors, or aides and are responsible for assisting test administrators with classroom management during testing, distribute and collect test materials, or administer accommodations as directed by the school test monitor and test administrator.

2304.6 An LEA shall:

- (a) Ensure the LEA test integrity coordinator(s) participate in the OSSE statewide test security policies and procedures prior to LEA-level training of LEA- and school-level authorized personnel;

- (b) Ensure all authorized personnel whose duties involve test administration are trained in state, LEA, and school requirements, policies and procedures.
- (c) Distribute to all authorized personnel of the LEA, including each school site within the LEA and nonpublic special education schools, the OSSE testing integrity and security notification statement, informing them of the consequences for knowingly and willingly violating laws, regulations, policies, guidance or school test security plan;
- (d) Provide access to secure test materials exclusively to authorized personnel;
- (e) Ensure LEA test site(s) implementing computer-based testing is technology-ready in accordance with the applicable school test security plans submitted to OSSE and test-specific technology requirements;
- (f) Ensure that procedures have been established for maintaining secure assessment technology platforms;

2304.7 Prior to performing any statewide assessment functions, accessing secure test materials, or assisting in the administration of a statewide assessment, authorized personnel shall:

- (a) Receive the OSSE testing integrity and security notification statement, informing them of the consequences for knowingly and willingly violating laws, regulations, policies, guidance or school test security plan; and
- (b) Participate in the required testing integrity and security training delivered by OSSE, the LEA Test Integrity Coordinator, or School Test Monitor.

2305 TESTING INTEGRITY AND SECURITY: TEST SECURITY PLANS

2305.1 A school shall create, maintain and submit a school test security plan to LEA.

2305.2 An LEA shall submit to OSSE, in the form and manner set forth by OSSE, a separate Test Security Plan for each respective school or campus within the LEAs control at least 15 business days before the administration of the first Statewide assessment for the school year.

2305.3 A school test security plan shall include the following:

- (a) Procedures for the secure maintenance, dissemination, collection, and storage of Districtwide assessment materials before, during, and after administering a test, including:

- (1) Keeping an inventory of all materials and identifying individuals with access to the materials;
- (2) Accounting for and reporting to the OSSE any materials that are lost or otherwise unaccounted; and
- (3) Accounting for and securing old or damaged materials;
- (b) The name and contact information for the LEA's test integrity coordinator;
- (c) The name and contact information for the test monitors at each school under the LEA's control;
- (d) The name and contact information for all authorized personnel at each school under the LEA's control
- (e) A list of actions prohibited by authorized personnel beyond the list of examples set forth in § 2312;
- (f) Procedures pursuant to which students, authorized personnel, and other individuals may, and are encouraged to, report irregularities in testing administration or testing security; and
- (g) Written procedures for investigating and remediating any complaint, allegation, or concern about a potential failure of testing integrity and security consistent with the procedures set forth in this Chapter.

2305.4 OSSE shall review a school test security plan and either:

- (a) Provide recommendations to amend specific provisions of the Test Security Plan, as necessary and appropriate; or
- (b) Approve a school test security plan least 5 days before the school begins the first Statewide assessment.

2305.5 An LEA may not begin the administration of the first Statewide assessment if OSSE has not approved a school's test security plan.

2305.6 An LEA shall not amend a school's test security plan after OSSE has approved the test security plan, without specific guidance or approval to amend from OSSE.

2305.7 OSSE shall maintain a copy of each school's test security plan on file, which shall be made available to a member of the public upon request.

2306 TESTING INTEGRITY AND SECURITY: DURING THE ADMINISTRATION OF STATEWIDE ASSESSMENTS

2306.1 An LEA shall administer statewide assessments, including monitoring a school(s) under the LEA's control, as prescribed in the appropriate law, regulations,

policies, plans and test administration manuals, and in a manner that upholds the integrity of testing and accuracy of the data by preventing any dishonest or fraudulent behavior and promoting a fair and equitable testing environment.

- 2306.2 A school shall administer statewide assessments as prescribed in the appropriate law, regulations, policies, plans and test administration manuals, and in a manner that upholds the integrity of testing and accuracy of the data by preventing any dishonest or fraudulent behavior and promoting a fair and equitable testing environment.
- 2306.3 An LEA shall ensure that school(s) and authorized personnel follow the process for resolving technical difficulties outlined in test administration manuals or any relevant guidance, and report computer-based/online difficulties that impact test administration.
- 2306.4 The testing environment, what a student can see, hear, or access, including via technology, during testing, shall comply with the provisions set forth in this Chapter and any additional guidance issued by OSSE annually pursuant to § 2304.1, and includes the following:
- (a) Hallways, stairwells, and bathrooms;
 - (b) Surfaces, including permanent or temporary fixtures, or projections;
 - (c) Equipment;
 - (d) Furniture;
 - (e) Posters, signs, wall art, blackboards, whiteboards or electronic message boards, and the writing and/or content thereon;
 - (f) Lighting; and
 - (g) Music, sounds or announcements projected.
- 2306.5 Authorized personnel shall designate an area(s) for administering the statewide assessment to students in tested grades.
- 2306.6 In the exceptional circumstance in which an individual student cannot be tested at the designated location, OSSE may require a site visit, demonstration, or memorandum of agreement as conditions for approval of the alternate location.
- 2306.7 An LEA shall ensure that student seating arrangements, regardless of the number of students testing in one session, allow students that engaged in active testing to test independently without distraction or violation of test security.

- 2306.8 Any information regarding the content being assessed or test-taking strategies (including word walls and multiplication tables) are prohibited in the testing environment and shall be removed or covered prior to the first day of the statewide assessment administration and remain removed or covered for the duration of active statewide assessment.
- 2306.9 Test administrators shall adhere the test administrator manuals as follows:
- (a) Test administrators shall read the scripts word-for word aloud the first time through;
 - (b) Test administrators may repeat scripted directions as many times as needed while delivering the script;
 - (c) If students ask for portions of the script to be re-read or clarified, test administrator may do so for the whole testing group;
 - (d) Test administrators shall only announce aloud the time updates specified in the assessment-specific test administrator manual, but may provide written updates at any additional time intervals;
- 2306.10 Test administrators and proctors may not engage in activities that prevent proper student supervision at all times while secure test materials are still distributed or while students are testing, such as grading papers, reading a book, newspaper, or magazine.
- 2306.11 Accommodations for eligible student(s) shall be explicitly identified in the following:
- (a) A student's Individualized Education Program (IEP) developed under Individuals with Disabilities Education Act, effective April 13, 1970, as amended (Pub. L. 91-230; 84 Stat. 191; as codified at 20 U.S.C. § 1400 *et seq.*) and the District of Columbia special education regulations;
 - (b) A student's plan developed under Section 504 of the Rehabilitation Act of 1973 (Section 504 plan); or
 - (c) A student's approved accommodation plan for an English Language Learner (ELL) as required in the Elementary and Secondary Education Act.
- 2306.12 The use of unapproved electronics by students, test administrators, and proctors shall be prohibited during the administration of a statewide assessment, unless the use is identified as an accommodation for an eligible student as set forth in § 2306.11.
- 2306.13 During the administration of paper-based tests, no cell phones may be in the testing environment at any point during testing by any individual. During the

administration of computer-based tests, LEA test integrity coordinators, school test monitors and school technology coordinators may use cell phones for the sole purpose of coordinating technical support if it is necessary for a student to complete a test.

2306.14 Acceptable actions to support students to stay on task and focused, and that do not impact the content of students' answers shall be set forth in OSSE annual guidance issued pursuant to § 2304.1.

2306.15 Individual statewide assessments may permit additional support materials, which will be specified in the testing manual if permitted. In the event that additional support materials are permitted:

- (a) Additional support materials shall be located in a pre-determined location in the testing room; and
- (b) School test monitors or test administrators shall ensure that the additional support materials are appropriate for testing prior to testing.
- (c) Report computer based/online difficulties that impact test administration (in accordance with the testing manuals;
- (d) Timely report any breach of testing integrity and security to the school's test monitor, the LEA's test integrity coordinator(s), and OSSE consistent with the standards, policies, and Statewide requirements for testing integrity and security as established by OSSE in accordance with Section 2304.1;
- (e) Document any allegation of the failure of the school test security plan or other test integrity and security protocol;
- (f) Report any allegation of the failure of the school test security plan or other test integrity and security protocol to OSSE; and
- (g) Follow the process for resolving technical difficulties outlined in test manuals and any relevant guidance provided by OSSE.

2307 TESTING INTEGRITY AND SECURITY: EXCEPTIONS OR SPECIAL CIRCUMSTANCES DURING ADMINISTRATION OF STATEWIDE ASSESSMENTS

2307.1 In addition to the exceptions and special circumstances set forth in this Section, OSSE may issue additional guidance annually to set forth further specialized instructions pursuant to § 2304.1.

2307.2 A school may provide administrative considerations regarding a student's testing environment for any student that may need such considerations if the school sets forth the administrative consideration in the manner and form set forth by OSSE.

- 2307.3 Students who are absent for any session that they have yet to begin of the statewide assessments may make up the test(s) during the testing window and in accordance with the specific days and times identified by the school in their OSSE approved School Test Security Plan.
- 2307.4 Students without an extended time accommodation may not receive extra time outside of the testing time limits for behavioral issues that impact testing.
- 2307.5 Students are not allowed to return to a testing session which they have exited after its initiation except in exceptional circumstances as individually approved and documented in writing by OSSE.
- 2307.6 The school may apply to OSSE for student exemption from testing, using the OSSE provided [Medical Exemption Form](#), if the student has a significant medical emergency, an accident, trauma, or illness (mental or physical) that has been determined by a licensed physician to preclude a student from taking all or part of a statewide assessment. The form shall be submitted to OSSE no later than 10 business days after the last day of the statewide assessment window.
- 2307.7 If there is a school-wide emergency requiring evacuation:
- (a) Follow the LEA/school-wide emergency protocol;
 - (b) Secure assessment materials only after student safety has been assured; and
 - (c) The test monitor shall complete an incident report and submit to the LEA test integrity coordinator(s) and the state test integrity coordinator.
- 2307.8 Homebound or hospital-tutored students enrolled in public education in the District of Columbia must participate in statewide assessments, administered by a trained test administrator. When circumstances make it impossible to test the student at the school, the school test monitor must work with the LEA test integrity coordinator(s) to determine how the student will participate in the statewide assessment and notify OSSE in the school test security plan.
- 2307.9 Home-schooled students' participation on the statewide assessment is voluntary. Parents and/or legal guardians implementing homeschooling programs and who wish to take part in the statewide assessment shall notify their assigned neighborhood District of Columbia Public School principal and/or school counselor to facilitate test registration and inclusion in testing plans.
- 2307.10 All eligible public school students receiving temporary instruction at a program or alternative school other than the school to which they are regularly enrolled shall participate in statewide assessments. Students in alternative settings may take the assessments at the schools in which the students are currently enrolled, their home, or at alternate testing sites approved by the LEA test integrity coordinator(s) and OSSE.

- 2307.11 LEAs must ensure that all eligible students enrolled at their LEA and schools subject to their control participate in statewide assessments, including students in nonpublic settings. Each nonpublic school or program shall adhere to the Testing Integrity Act and the following requirements:
- (a) Ensure that every District of Columbia student enrolled in a nonpublic special education school or program is appropriately included in the statewide assessment system or alternate assessment approved by OSSE;
 - (b) Ensure that statewide assessments are administered according to federal and state law, regulations, and state policy regarding test;
 - (c) Comply with all federal and state law, regulations, and policy regarding testing and testing integrity;
 - (d) Comply with all LEA and school level requirements outlined in this document;
 - (e) Create and maintain a school test security plan for their site as outlined above;
 - (f) Work closely with the LEA to ensure that the nonpublic school test security plan is integrated, reviewed, and approved by the LEA test integrity coordinator(s) at students' LEAs of enrollment;
 - (g) Maintain documentation showing that District of Columbia students completed the statewide assessment;
 - (h) Provide any requested statewide testing documentation to referring LEA and/or OSSE upon request;
 - (i) In the event that there is a test security, irregularity, or data integrity issue, the nonpublic must contact OSSE and the LEA test integrity coordinator(s) at the student(s)' LEA(s) of enrollment; and
 - (j) In an exceptional circumstance in which an individual student cannot be tested at the designated location, OSSE may require a site visit, demonstration, and/or memorandum of agreement as conditions for approval of the alternate location.
- 2307.12 The following students shall be tested in a one-on-one setting or in a small group with only students receiving the same accommodation:
- (a) Students receiving accommodations that require student speaking (e.g., student reads aloud to themselves);
 - (b) Students receiving a human reader accommodation in a small group setting with only students receiving the human reader accommodation, if

the testing environment is set up so that no other students may hear any other student responses; and

- (c) Students receiving the human scribe accommodation.

2308 TESTING INTEGRITY AND SECURITY: AFTER THE ADMINISTRATION OF STATEWIDE ASSESSMENTS

2308.1 At the end of each administration of a statewide assessment, the school Return/dispose of all secure and non-secure test materials following procedures outlined in the appropriate testing manuals, regulations, policies and guidance, and the test security plan.

2308.2 At the end of each administration of a statewide assessment, the LEA Test Coordinator(s) and School Test Monitor(s) shall sign the Testing Integrity and Security Affidavit within 10 business days attesting that to the best of his or her knowledge or belief, the LEA and/or school complied with all applicable laws, regulations, policies and guidance, including the Test Security Plan.

2308.3 A school shall submit the Test Integrity and Test Security Affidavit forms for each school monitor to the LEA test integrity coordinator(s) within 10 business days after the conclusion of the last statewide assessment.

2308.4 After the conclusion of each administration of a Statewide assessment, LEAs shall ensure the following:

- (a) Within 10 business days after the conclusion of each statewide assessment, the LEA Test Coordinator shall obtain signed, under penalty of law, affidavits from the LEA's test integrity coordinator(s) and each of the LEA's school test monitors attesting that, to the best of his or her knowledge or belief, the LEA or school complied with all applicable laws, regulations, policies and guidance, including the test security plan; and
- (b) Within 15 business days after conclusion of each statewide assessment, the LEA Test Coordinator shall file with OSSE the affidavit provided by OSSE affirming compliance with all applicable laws, regulations, policies and guidance, and the test security plan.

2309 TESTING INTEGRITY AND SECURITY: RECORD KEEPING

2309.1 An LEA shall maintain a record of the following items for each school under their control for a minimum of four (4) years:

- (a) OSSE-approved Test Security Plan(s);
- (b) Identification of LEA and school authorized personnel;

- (c) Attendance sheets for testing integrity and security training sessions;
- (d) Copies of each Testing Integrity and Security Notification Statement;
- (e) Executed LEA and School Test Monitor testing integrity and security affidavits;
- (f) Documentation of testing irregularities;
- (g) Documentation of testing integrity and security investigations;
- (h) Documentation of damaged, missing, and misplaced test materials;
- (i) Copies of LEA Plan to Improve School Test Security Policies and Procedures and OSSE-approved LEA Corrective Action Plan(s);
- (j) Documentation of the implementation of OSSE sanctions;
- (k) Parent Notification letters;
- (l) Test Materials Chain of Custody Forms;
- (m) Incident reports;
- (n) During Testing Notes, including minor deviations from school plan; and
- (o) Plans to improve school policies and procedures, if applicable.

2309.2 A school shall maintain hard copy Test Security File for a period of four years, which includes at a minimum:

- (a) School Test Security Plan;
- (b) Test Security Training Attendance for Authorized Personnel;
- (c) Parent Notification letter;
- (d) Test Materials Chain-of-Custody Forms;
- (e) Incident Reports;
- (f) During Testing Notes, including Minor Deviations from School Plan; and
- (g) Plans to Improve School Policies and Procedures, as necessary.

2309.3 An LEA or school may also maintain electronic files in addition to the required hard copy.

2310 TESTING INTEGRITY AND SECURITY: TRAINING AND TECHNICAL ASSISTANCE; MONITORING

- 2310.1 An LEA may request that OSSE provide technical assistance to LEAs or school regarding testing integrity and security procedures
- 2310.2 An LEA shall also monitor the administration of statewide assessments to ensure that applicable federal and local assessment law, regulations, policies, plans, and manuals are being followed;
- 2310.3 OSSE may provide technical assistance to a school or LEA at any time regarding testing integrity and security procedures, including real-time assistance and expertise to respond to potentially critical incidents.
- 2310.4 In order to ensure the security and proper administration of the statewide assessment, OSSE may conduct announced and unannounced on-site and desktop monitoring visits at any school or LEA to observe the procedures followed during test administration.
- 2310.5 OSSE may enter testing rooms to observe students and test administrators directly to specifically observe whether:
- (a) Materials are stored properly;
 - (b) Test administrators are administering tests appropriately; or
 - (c) The testing environment is secure.
- 2310.6 OSSE may audit statewide assessment administration procedures at randomly selected schools and at targeted schools to ensure adherence to all applicable laws, regulations, and policies.
- 2310.7 OSSE may use a variety of commonly accepted statistical and audit procedures to:
- (a) Review and audit both test score data and individual test documents for any anomalies; or
 - (b) Audit vendor testing records to ensure appropriate test participation and administration procedures are followed.

2311 TESTING INTEGRITY AND SECURITY: REQUIRED REPORTING

- 2311.1 Authorized personnel shall notify OSSE as soon as the LEA or school becomes aware of any alleged or suspected violation of the security or confidential integrity of a statewide assessment via OSSE's Incident Reporting system or process.

- 2311.2 An LEA shall, in a timely manner, report all Testing Irregularities to the Test Monitor, Test Integrity Coordinator, or OSSE as appropriate and consistent with the standards, policies, and Statewide requirements for testing integrity and security.
- 2311.3 Authorized personnel shall follow the process for resolving technical difficulties outlined in test manuals and any relevant guidance, and report computer-based or online difficulties that impact test administration.
- 2311.4 All technical problems and delays which significantly impact the administration of the assessment shall be reported and documented by the test monitor as an incident through the incident reporting system.
- 2311.5 Individuals may report irregularities directly to OSSE in person, by phone or online via OSSE's Online Incident Reporting Form.
- 2311.6 Any person who witnesses or believes a test security violation occurred must report it as soon as possible but no later than 24 hours after the alleged violation occurred. Potential violations may be reported directly to the school test monitor or the LEA test integrity coordinator(s); to OSSE's Division of Data, Assessment, and Research (DAR); anonymously to the test integrity coordinator, or anonymously online using the OSSE Incident Report Form. LEA test integrity coordinator(s) shall submit any alleged test security violations to OSSE.

2312 TESTING INTEGRITY AND SECURITY: VIOLATIONS

- 2312.1 A violation is any incident or action, intentional or otherwise, that breaches the security or threatens the integrity of the statewide assessment results, that includes the following, as defined herein:
- (a) Breach;
 - (b) Cheating;
 - (c) Compromise;
 - (d) Impropriety;
 - (e) Irregularity;
 - (f) Misconduct; or
 - (g) Test Piracy.
- 2312.2 Examples of violations may include the following:
- (a) Incomplete or missing test documents;

- (b) Inconsistencies in the application of administration procedures;
- (c) Misinterpretation of requirements in the Test Coordinator/Administrator Manuals not related; to test tampering or academic fraud;
- (d) Failure to report certain types of incidents;
- (e) Failure to provide appropriate accommodations or providing accommodations to students who are not eligible
- (f) Failure to distribute, collect, or refusal to sign Non-Disclosure Agreements;
- (g) Educator coaching;
- (h) Providing students with answers;
- (i) Allowing student(s) use of calculators or other technology when prohibited, or providing unauthorized accommodations, unless otherwise permitted;
- (j) School- or LEA-level coordination of educator coaching;
- (k) School-wide test fraud; or
- (l) Test tampering.

2312.3 An incident or action by an authorized personnel shall not be considered a violation if the action meets one of the following expectations:

- (a) The action was necessary to provide for an accommodation that is identified as an accommodation for an eligible student as set forth in § 2306.11; or
- (b) The action was considered an acceptable action pursuant to § 2306.14 that was limited to supporting students to stay on task and focused and did not impact the content of students' answers.

2313 TESTING INTEGRITY AND SECURITY: INVESTIGATIONS

2313.1 An LEA shall cooperate and participate in any OSSE investigation.

2313.2 Upon its own initiative, or upon receipt of information alleging violation(s) of any an applicable law, regulation, or policy relating to testing integrity and security, OSSE may conduct an investigation, in accordance with the relevant provisions of this Chapter, to ensure that assessment results are valid and trustworthy or to determine whether a violation occurred.

- 2313.3 Investigations may be conducted by an entity authorized by OSSE.
- 2313.4 OSSE may initiate an investigation as necessary, including during or after the administration of the statewide assessments.
- 2313.5 An LEA shall ensure that all relevant LEA and school staff designated as authorized personnel are made available to cooperate and participate in the investigation.
- 2313.6 An LEA shall access and use the internet-based test security incident management platform provided by OSSE or an OSSE designee for the purposes of completing the LEA inquiry component of the investigation.
- 2313.7 OSSE shall initiate an investigation if:
- (a) OSSE identifies egregious noncompliance; or
 - (b) OSSE receives a report or complaint alleging a violation of the laws, regulations, and policies relating to testing integrity and security.
- 2313.8 OSSE may initiate an investigation in other circumstances, including:
- (a) Several or severe “monitoring” visits during testing administration;
 - (b) An LEA conducted their own investigation instead of immediately reporting any concerns or potential violations to OSSE;
 - (c) Significant statistical anomalies were detected in the test response data of one or more groups of students in the school;
 - (d) Data forensics at identifying unusual changes in scores, year to year;
 - (e) Patterns of inappropriate assessment practices that occur over time
 - (f) Information derived as a result of social media monitoring for potential violations;
 - (g) Receipt by OSSE of incident reports, support tickets, or training issues;
 - (h) Observation of a violation prior to, during or after the administration of a Statewide assessment through a review of test administration practices;
 - (i) Irregularity reports;
 - (j) Media monitoring that indicate a breach of security;

- (k) Monitoring reports prepared by OSSE or OSSE designees; or
- (l) Random identification.

2314 TESTING INTEGRITY AND SECURITY: INVESTIGATION PROCESS

2314.1 An investigation to ensure that assessment results are valid and trustworthy or to determine whether a violation occurred may include the following two phases:

- (a) An LEA inquiry, in the form and manner set forth by OSSE or OSSE's designee, which includes the following:
 - (1) Document Collection: An LEA shall collect the documents requested by OSSE and if any of the required documents are not provided, the LEA factfinders shall provide a written explanation.
 - (2) Interviews with the following, as applicable:
 - (A) School test coordinator;
 - (B) Special Populations (accommodations) coordinator;
 - (C) Technology coordinator;
 - (D) Student(s), if applicable;
 - (E) Proctor(s); and
 - (F) Test administrator(s). And,
- (b) An OSSE review, which includes but is not limited to the following:
 - (1) Comprehensive examination of the documents, data, information and evidence provided through the LEA inquiry;
 - (2) Collection and review of additional relevant documents, as necessary;
 - (3) Review of any OSSE records that may be relevant to the investigation; and
 - (4) Determination of whether a violation occurred.

2314.2 If there is an allegation of a violation that involved school- or LEA-level coordination or participation, the investigation shall not include an LEA inquiry

phase. OSSE, or an OSSE designee will collect the documents and conduct the interviews.

2314.3 Once OSSE has determined an investigation is necessary, OSSE shall inform the LEA, in writing, that OSSE is initiating an investigation as follows:

- (a) State the circumstance(s) that triggered the investigation;
- (b) Identify the following information, as applicable to the investigation:
 - (1) The school(s) to be investigated;
 - (2) The grade level(s) and subject(s);
 - (3) The assessment under investigation;
 - (4) Relevant details regarding the administration of the assessment under investigation; and
 - (5) The student(s), proctor(s); and test administrators(s).

2314.4 During the LEA inquiry phase of the investigation, the LEA shall:

- (a) Designate two (2) LEA employees as the LEA factfinders, neither of whom shall have served a direct role in the oversight of testing integrity and security at the school or LEA, including members of the LEA or school assessment team;
- (b) Submit the names, titles, contact information of the LEA factfinders to OSSE within two (2) business days;
- (c) Ensure the LEA factfinders complete any training required by OSSE to conduct the LEA inquiry; and
- (d) Conduct the LEA inquiry in the form and manner set forth by OSSE or OSSE's designee.

2314.5 At any time during the LEA inquiry, OSSE may request additional information in the form of documents or interviews, as needed, upon reviewing the data and evidence submitted by an LEA. An LEA shall respond to OSSE's request within two (2) business days.

2315 TESTING INTEGRITY AND SECURITY: CONSEQUENCES FOR VIOLATIONS

- 2315.1 Any individual person, school or LEA may be subject to the penalties and sanctions set forth in this section if, based upon the investigation, OSSE finds a violation of security, confidentiality or integrity of any statewide assessment administered pursuant to § 2312.
- 2315.2 If OSSE finds that a violation occurred, OSSE shall evaluate the violation and determine the most appropriate sanction(s) based on severity and precedent, taking into account the following:
- (a) The seriousness of the violation;
 - (b) The extent of the violation;
 - (c) The role the individual played in the violation;
 - (d) The LEA leadership's involvement;
 - (e) How and when the violation was reported to OSSE; and
 - (f) The action taken by the LEA since the violation was reported to OSSE.
- 2315.3 When a sanctionable violation is issued against an LEA or school, OSSE shall issue the following sanctions to an LEA or school:
- (a) The payment of any expenses incurred by OSSE as a result of the violation, including the costs associated with developing, in whole or in part, a new assessment;
 - (b) An administrative fine of not more than \$10,000 for each violation; and
 - (c) The invalidation of test scores.
- 2315.4 An individual who knowingly and willfully violates, assists in the violation of, solicits another to violate or assist in the violation of, or fails to report a violation of the Testing Integrity Act, the OSSE Test Integrity Guidelines, the school test security plan, or other test integrity policy or procedure, shall be subject to sanctions, which shall include:
- (a) Denial, suspension, revocation, or cancellation of, or restrictions on the issuance or renewal, of a teaching or administrative credential or teaching certificate issued by OSSE, or both, for a period of not less than one (1) year;
 - (b) Payment of expenses incurred by the LEA or OSSE as a result of the violation; and
 - (c) An administrative fine, not to exceed \$1,000 for each violation.

- 2315.5 If OSSE finds that a non-sanctionable violation occurred, OSSE may issue the following consequences:
- (a) Invalidation of student(s) test results;
 - (b) Stopping testing;
 - (c) Voiding test score(s);
 - (d) Additional training; or
 - (e) Other method of corrective action as determined by OSSE.
- 2315.6 Regardless if OSSE finds a violation occurred, OSSE may require the LEA to demonstrate compliance with a corrective action plan to address any irregularities or concerns found during an investigation that includes the specific strategies, processes, school-level protocols (additional trainings, supporting materials, LEA monitoring of schools, etc.) that the school or LEA will take to ensure valid and secure administration in the following year.
- 2315.7 Consequences imposed by OSSE do not limit an LEA's authority to impose its own sanctions up to and including termination of LEA or school employee(s).
- 2315.8 OSSE shall provide written notification of the finding and an opportunity for review, as specified in this Protocol, as follows:
- (a) Notice of Finding of No Violation shall:
 - (1) State that OSSE investigation determined that a violation did not occur; and
 - (2) Offer technical assistance or a corrective action plan to avoid potential investigations in the future.
 - (b) Notice of Finding of Non-sanctionable Violation shall:
 - (1) State the violation; and
 - (2) Notify that they have 30 days from the date the written notification is issued to request a reconsideration of the finding of non-sanctionable violation.;
 - (c) Notice of Finding of Violation and Issuance of Sanction to an LEA
 - (1) State the violation; and

- (2) Notify that the LEA have 10 calendar days from the date the written notification is issued to request an administrative review of the sanctionable finding.
- (d) Notice of Finding of Violation and Issuance of Sanction to an individual
 - (1) State the violation;
 - (2) Notify that the individuals has 10 calendar days from the date the written notification is issued to request an administrative review of the sanctionable finding; and
 - (3) Provide notice to school and LEA leadership.

2316 TESTING INTEGRITY AND SECURITY: RECONSIDERATION OF A FINDING OF NON-SANCTIONABLE VIOLATION

- 2316.1 An LEA or school may request reconsideration of the “Notice of the Finding of Non-Sanctionable Violation(s)” (Non-Sanctionable Notice) within thirty (30) calendar days of the date of the Non-Sanctionable Notice.
- 2316.2 A written request for reconsideration shall be submitted to OSSE in the form and manner set forth by OSSE and shall, at minimum, include the following:
- (a) A concise statement of facts that describe events resulting in the non-sanctionable finding;
 - (b) The specific basis for contesting the non-sanctionable finding;
 - (c) The specific relief requested; and
 - (d) Two (2) copies of all documentary evidence supporting the recipient's positions.
- 2316.3 If the request for reconsideration is based in whole or in part on new or additional evidence, the written request shall demonstrate that the new or additional evidence is relevant and material, and explain why the new or additional evidence was not reasonably available prior to the issuance of the Non-Sanctionable Notice.
- 2316.4 Upon receipt of the request, the State Superintendent, or the State Superintendent’s designee, shall review the LEA’s request or may delegate the matter to be reviewed by an OSSE employee who has not had any direct involvement or participated in the investigation, the determination of a violation, or the issuance of non-sanctionable finding.
- 2316.5 The deciding official shall deny a request for reconsideration if, based on the totality of circumstances, the deciding official finds:

- (a) OSSE properly issued the Non-Sanctionable Notice in the manner set forth in this Protocol;
- (b) No significant or material departure from this Protocol occurred during the investigation;
- (c) The finding of non-sanctionable violation(s) is substantially supported by the information and facts determined through the investigation;
- (d) The new or additional evidence is not relevant and material; or
- (e) The new or additional evidence was reasonably available.

2316.6 The deciding official may remand the finding to OSSE's assessments team to conduct a new investigation or other appropriate action if, based on the totality of circumstances, the deciding official finds:

- (a) OSSE failed to properly issued the Non-Sanctionable Notice in the manner set forth in this Protocol;
- (b) Significant or material departure from testing integrity and security protocol occurred during the investigation that substantively impacted the findings;
- (c) New or additional evidence has been discovered that previously was not reasonably available and that is relevant and material to a finding of a non-sanctionable violation; or
- (d) A member of the investigation team had a conflict of interest or other ethical breach, which substantively affected the integrity of the investigation.

2316.7 The deciding official's decision granting, denying or remanding the request for reconsideration of the Non-sanctionable Notice shall be in writing and shall be the final agency decision.

2317 TESTING INTEGRITY AND SECURITY: ADMINISTRATIVE REVIEW OF FINDING OF SANCTIONABLE VIOLATION

2317.1 Any individual, school, or LEA aggrieved by a "Notice of Finding of Sanctionable Violation and Issuance of Sanction" (Sanction Notice) may obtain a review of the final decision by timely filing a written request for administrative review with the Office of Administrative Hearings (OAH), established pursuant to the Office of Administrative Hearings Establishment Act of 2001, effective March 6, 2002 (D.C. Law 14-76; D.C. Official Code, §§ 2-1831.01 *et seq.*), or OAH's successor.

- 2317.2 The written request for administrative review shall be filed with OAH no later than ten (10) calendar days from the date of the Sanction Notice.
- 2317.3 The written request for administrative review shall include the following:
- (a) The type and effective date of the sanction imposed;
 - (b) The name, address, and telephone number of the aggrieved party or the aggrieved party's representative;
 - (c) A copy of the Sanction Notice;
 - (d) A statement as to whether the aggrieved party or anyone acting on his or her behalf has filed for administrative review or appeal under any negotiated review procedure pursuant to a collective bargaining agreement, or has filed a complaint with any other agency;
 - (e) The identity of the collective bargaining unit, if any, of which the aggrieved party is a member;
 - (f) A concise statement of the facts giving rise to the request for administrative review;
 - (g) An explanation as to why the aggrieved party believes OSSE's issuance of sanctions was unwarranted and the submission of any supporting documentation;
 - (h) A statement of the specific relief the aggrieved party is requesting; and
 - (i) The signature of the aggrieved party and his or her representative.
- 2317.4 If the aggrieved party is a member of a collective bargaining unit, he or she may choose between the negotiated grievance process set forth in a collective bargaining agreement or the administrative review process set forth in this Protocol.
- 2317.5 If a request for administrative review is not filed with OAH within ten (10) days, the Sanction Notice shall become OSSE's final administrative decision.
- 2317.6 If a request for administrative review is filed timely, the final OAH decision shall thereafter constitute OSSE's final administrative decision, and shall be subject to the applicable statutes and rules of judicial review for OAH final orders.
- 2317.7 Any person(s) aggrieved by a final decision of OAH may appeal the decision to the District of Columbia Court of Appeals pursuant to Section 11 of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1209; D.C. Official Code § 2-510).

2399 DEFINITIONS

2399.1 When used in this chapter, the following terms and phrases shall have the meanings ascribed:

Breach – An event, intentional or not, that results in the inappropriate exposure of test items or answers that could potentially impact the accuracy of the test results; or an action by others before, during, or after a test administration to impact student test scores (e.g., educators changing student answer sheets).

Cheating – General term that can include educator or student misconduct or improprieties that includes intentional misbehavior or unethical practices. Note that this term is not used in every state. Some states avoid the use of the word “cheating” in their communications and use different terminologies.

Compromise – Disclosure of test items or forms; can be intentional or unintentional. May also refer to changing the interpretation of a test score or changing the test score itself.

Impropriety – Inappropriate misconduct; a more serious offense than an irregularity. The difference between impropriety and irregularity is usually defined in perception of the degree, intent, and/or effect of the misconduct.

Invalidation – The act of omitting test results and student responses from the testing, reporting, and accountability systems for a given testing event for which the student may not retest.

Irregularity – This includes many different activities, not necessarily cheating, but anything unusual that happened during testing, such as the fire alarms went off or a power outage.

Misconduct – Misbehavior during testing, such as inappropriate proctoring or other violations of standard testing protocol.

OSSE – the Office of the State Superintendent of Education.

Secure Materials - as defined in D.C. Official Code § 38-2602(b)(20)(O)(iii-I), test materials that might contain or provide access to assessment content, such as information about test questions or answers, including test questions, passages, or performance tasks, answer documents, and used scratch paper.

Statewide Assessment – Districtwide assessment as defined in D.C. Official Code § 38-771.01(2).

Test Administrator Manual - An assessment-specific and vendor-developed manual published and shared with LEAs and schools by OSSE, which provides required instructions applicable to Test Administrators necessary for the administration of the assessment, as well as the procedures and protocols for completion before, during, and after test administration and which also contains high-level protocols required for test security and test administration.

Test Monitor – A specialized type of Authorized Personnel who is responsible for testing integrity and security at each individual school subject to the LEA's control during the administration of a Statewide assessment.

Test piracy – Stealing of test forms, items, prompts, or other secure testing materials, often for the purpose of selling the materials to others.

Test Items – All secure test materials including but not limited to: test questions, test prompts, passages, and the layout of the Statewide assessment.

Test Materials - Secure or non-secure documents for purposes of the administration of a Statewide assessment.

Testing environment -- Includes, but is not limited to, the testing room, hallways, stairwells, and bathrooms where testing students travel during testing sessions.

Testing window --The particular date(s) and time(s) scheduled for an individual testing group to take a specified Statewide assessment or portion thereof.

Unapproved electronics – Any technological device not used by a student, test administrator or proctor to take or administer a statewide assessment.

All persons desiring to comment on the subject matter of this advanced notice of proposed rulemaking should file comments in writing not later than thirty (30) days after the date of publication of this notice in the D.C. Register via email addressed to: ossecomments.proposedregulations@dc.gov; or by mail or hand delivery to the Office of the State Superintendent of Education, Attn: Tiffany Oates re: ANPR Testing Integrity, 1050 First Street, NE Third Floor, Washington, DC 20002. Additional copies of this rule are available from the above address and on the Office of the State Superintendent of Education website at www.osse.dc.gov.