

(g) Coordination

The Commissioner for Education Statistics and the Assessment Board shall meet periodically—

(1) to ensure coordination of their duties and activities relating to the National Assessment; and

(2) for the Commissioner for Education Statistics to report to the Assessment Board on the Department's actions to implement the decisions of the Assessment Board.

(h) Administration

The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply with respect to the Assessment Board, other than sections 10, 11, and 12 of such Act.

(Pub. L. 107-279, title III, §302, formerly Pub. L. 103-382, title IV, §412, Oct. 20, 1994, 108 Stat. 4039; Pub. L. 106-554, §1(a)(1) [title III, §307], Dec. 21, 2000, 114 Stat. 2763, 2763A-44; Pub. L. 107-110, title VI, §602(b), Jan. 8, 2002, 115 Stat. 1904; renumbered Pub. L. 107-279, title III, §302, and amended Pub. L. 107-279, title IV, §401(c), Nov. 5, 2002, 116 Stat. 1983.)

REFERENCES IN TEXT

The Federal Advisory Committee Act, referred to in subsec. (h), is Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, which is set out in the Appendix to Title 5, Government Organization and Employees.

CODIFICATION

Section was formerly classified to section 9011 of this title prior to renumbering by Pub. L. 107-279.

PRIOR PROVISIONS

A prior section 302 of Pub. L. 107-279 was renumbered section 304 and is classified to section 9623 of this title.

AMENDMENTS

2002—Pub. L. 107-110 amended section generally, restating and expanding provisions and inserting headings.

Subsec. (a). Pub. L. 107-279, §401(c)(1), substituted “referred to as the ‘Assessment Board’” for “referred to as the ‘Board’” and inserted “(carried out under section 9622 of this title)” after “for the National Assessment”.

Subsec. (b)(1). Pub. L. 107-279, §401(c)(2), substituted “Assessment Board” for “Board” in introductory provisions.

Subsec. (b)(2). Pub. L. 107-279, §401(c)(4), substituted “Director of the Institute of Education Sciences” for “Assistant Secretary for Educational Research” in heading and “Assistant Secretary for Educational Research and Improvement” in text.

Pub. L. 107-279, §401(c)(2), substituted “Assessment Board” for “Board”.

Subsecs. (b)(3) to (d)(1). Pub. L. 107-279, §401(c)(2), substituted “Assessment Board” for “Board” wherever appearing.

Subsec. (e)(1). Pub. L. 107-279, §401(c)(2), (5)(A)(vii), substituted “Assessment Board” for “Board” in introductory provisions and inserted concluding provisions.

Subsec. (e)(1)(A). Pub. L. 107-279, §401(c)(5)(A)(i), substituted “section 9622(b)” for “section 9010(b)”.

Subsec. (e)(1)(B). Pub. L. 107-279, §401(c)(5)(A)(ii), substituted “section 9622(e)” for “section 9010(e)”.

Subsec. (e)(1)(E). Pub. L. 107-279, §401(c)(5)(A)(iii), struck out “, including the Advisory Council established under section 9006 of this title” before semicolon at end.

Subsec. (e)(1)(F), (I). Pub. L. 107-279, §401(c)(5)(A)(iv), substituted “section 9622” for “section 9010” wherever appearing.

Subsec. (e)(1)(J). Pub. L. 107-279, §401(c)(5)(A)(v)-(vii), added subpar. (J).

Subsec. (e)(2) to (4). Pub. L. 107-279, §401(c)(2), substituted “Assessment Board” for “Board”.

Subsec. (e)(5). Pub. L. 107-279, §401(c)(5)(B), struck out “and the Advisory Council on Education Statistics” before “and other experts.”

Pub. L. 107-279, §401(c)(3), substituted “Commissioner for Education Statistics” for “Commissioner”.

Pub. L. 107-279, §401(c)(2), substituted “Assessment Board” for “Board”.

Subsec. (e)(6). Pub. L. 107-279, §401(c)(5)(C), substituted “section 9622(e)” for “section 9010(e)”.

Pub. L. 107-279, §401(c)(2), substituted “Assessment Board” for “Board” in two places.

Subsec. (f). Pub. L. 107-279, §401(c)(2), substituted “Assessment Board” for “Board” wherever appearing.

Subsec. (g). Pub. L. 107-279, §401(c)(3), substituted “Commissioner for Education Statistics” for “Commissioner” in two places.

Pub. L. 107-279, §401(c)(2), substituted “Assessment Board” for “Board” wherever appearing.

Subsec. (h). Pub. L. 107-279, §401(c)(2), substituted “Assessment Board” for “Board”.

2000—Subsec. (c)(1). Pub. L. 106-554, §1(a)(1) [title III, §307(1)], substituted “4 years” for “3 years”.

Subsec. (c)(4). Pub. L. 106-554, §1(a)(1) [title III, §307(2)], added par. (4).

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107-110 effective Jan. 8, 2002, except with respect to certain noncompetitive programs and competitive programs, see section 5 of Pub. L. 107-110, set out as an Effective Date note under section 6301 of this title.

SHORT TITLE

This subchapter is known as the “National Assessment of Educational Progress Authorization Act”, see Short Title note set out under section 9501 of this title.

§9622. National Assessment of Educational Progress**(a) Establishment**

The Commissioner for Education Statistics shall, with the advice of the Assessment Board established under section 9621 of this title, carry out, through grants, contracts, or cooperative agreements with one or more qualified organizations, or consortia thereof, a National Assessment of Educational Progress, which collectively refers to a national assessment, State assessments, and a long-term trend assessment in reading and mathematics.

(b) Purpose; State assessments**(1) Purpose**

The purpose of this section is to provide, in a timely manner, a fair and accurate measurement of student academic achievement and reporting of trends in such achievement in reading, mathematics, and other subject matter as specified in this section.

(2) Measurement and reporting

The Commissioner for Education Statistics, in carrying out the measurement and reporting described in paragraph (1), shall—

(A) use a random sampling process which is consistent with relevant, widely accepted professional assessment standards and that produces data that are representative on a national and regional basis;

(B) conduct a national assessment and collect and report assessment data, including

achievement data trends, in a valid and reliable manner on student academic achievement in public and private elementary schools and secondary schools at least once every 2 years, in grades 4 and 8 in reading and mathematics;

(C) conduct a national assessment and collect and report assessment data, including achievement data trends, in a valid and reliable manner on student academic achievement in public and private schools in reading and mathematics in grade 12 in regularly scheduled intervals, but at least as often as such assessments were conducted prior to January 8, 2002;

(D) to the extent time and resources allow, and after the requirements described in subparagraph (B) are implemented and the requirements described in subparagraph (C) are met, conduct additional national assessments and collect and report assessment data, including achievement data trends, in a valid and reliable manner on student academic achievement in grades 4, 8, and 12 in public and private elementary schools and secondary schools in regularly scheduled intervals in additional subject matter, including writing, science, history, geography, civics, economics, foreign languages, and arts, and the trend assessment described in subparagraph (F);

(E) conduct the reading and mathematics assessments described in subparagraph (B) in the same year, and every other year thereafter, to provide for 1 year in which no such assessments are conducted in between each administration of such assessments;

(F) continue to conduct the trend assessment of academic achievement at ages 9, 13, and 17 for the purpose of maintaining data on long-term trends in reading and mathematics;

(G) include information on special groups, including, whenever feasible, information collected, cross tabulated, compared, and reported by race, ethnicity, socioeconomic status, gender, disability and limited English proficiency; and

(H) ensure that achievement data are made available on a timely basis following official reporting, in a manner that facilitates further analysis and that includes trend lines.

(3) State assessments

(A) In general

The Commissioner for Education Statistics—

(i) shall conduct biennial State academic assessments of student achievement in reading and mathematics in grades 4 and 8 as described in paragraphs (2)(B) and (2)(E);

(ii) may conduct the State academic assessments of student achievement in reading and mathematics in grade 12 as described in paragraph (2)(C);

(iii) may conduct State academic assessments of student achievement in grades 4, 8, and 12 as described in paragraph (2)(D); and

(iv) shall conduct each such State assessment, in each subject area and at each grade level, on a developmental basis until the Commissioner for Education Statistics determines, as the result of an evaluation required by subsection (f), that such assessment produces high quality data that are valid and reliable.

(B) Agreement

(i) In general

States participating in State assessments shall enter into an agreement with the Secretary pursuant to subsection (d)(3).

(ii) Content

Such agreement shall contain information sufficient to give States full information about the process for decision-making (which shall include the consensus process used), on objectives to be tested, and the standards for random sampling, test administration, test security, data collection, validation, and reporting.

(C) Review and release

(i) In general

Except as provided in clause (ii), a participating State shall review and give permission for the release of results from any test of its students administered as a part of a State assessment prior to the release of such data. Refusal by a State to release its data shall not restrict the release of data from other States that have approved the release of such data.

(ii) Special rule

A State participating in the biennial academic assessments of student achievement in reading and mathematics in grades 4 and 8 shall be deemed to have given its permission to release its data if the State has an approved plan under section 6311 of this title.

(4) Prohibited activities

(A) In general

The use of assessment items and data on any assessment authorized under this section by an agent or agents of the Federal Government to rank, compare, or otherwise evaluate individual students or teachers, or to provide rewards or sanctions for individual students, teachers, schools or local educational agencies is prohibited.

(B) Special rule

Any assessment authorized under this section shall not be used by an agent or agents of the Federal Government to establish, require, or influence the standards, assessments, curriculum, including lesson plans, textbooks, or classroom materials, or instructional practices of States or local educational agencies.

(C) Applicability to student educational decisions

Nothing in this section shall be construed to prescribe the use of any assessment au-

thorized under this section for student promotion or graduation purposes.

(D) Applicability to home schools

Nothing in this section shall be construed to affect home schools, whether or not a home school is treated as a home school or a private school under State law, nor shall any home schooled student be required to participate in any assessment referenced or authorized under this section.

(5) Requirement

In carrying out any assessment authorized under this section, the Commissioner for Education Statistics, in a manner consistent with subsection (c)(3), shall—

(A) use widely accepted professional testing standards, objectively measure academic achievement, knowledge, and skills, and ensure that any academic assessment authorized under this section be tests that do not evaluate or assess personal or family beliefs and attitudes or publicly disclose personally identifiable information;

(B) only collect information that is directly related to the appraisal of academic achievement, and to the fair and accurate presentation of such information; and

(C) collect information on race, ethnicity, socioeconomic status, disability, limited English proficiency, and gender.

(6) Technical assistance

In carrying out any assessment authorized under this section, the Commissioner for Education Statistics may provide technical assistance to States, localities, and other parties.

(c) Access

(1) Public access

(A) In general

Except as provided in paragraph (3), parents and members of the public shall have access to all assessment data, questions, and complete and current assessment instruments of any assessment authorized under this section. The local educational agency shall make reasonable efforts to inform parents and members of the public about the access required under this paragraph.

(B) Timeline

The access described in this paragraph shall be provided within 45 days of the date the request was made, in writing, and be made available in a secure setting that is convenient to both parties.

(C) Prohibition

To protect the integrity of the assessment, no copy of the assessment items or assessment instruments shall be duplicated or taken from the secure setting.

(2) Complaints

(A) In general

Parents and members of the public may submit written complaints to the Assessment Board.

(B) Forwarding of complaints

The Assessment Board shall forward such complaints to the Commissioner for Edu-

cation Statistics, the Secretary of Education, and the State and local educational agency from within which the complaint originated within 30 days of receipt of such complaint.

(C) Review

The Assessment Board, in consultation with the Commissioner for Education Statistics, shall review such complaint and determine whether revisions are necessary and appropriate. As determined by such review, the Board shall revise, as necessary and appropriate, the procedures or assessment items that have generated the complaint and respond to the individual submitting the complaint, with a copy of such response provided to the Secretary, describing any action taken, not later than 30 days after so acting.

(D) Report

The Secretary shall submit a summary report of all complaints received pursuant to subparagraph (A) and responses by the Assessment Board pursuant to subparagraph (C) to the Chairman of the House Committee on Education and the Workforce, and the Chairman of the Senate Committee on Health, Education, Labor, and Pensions.

(E) Cognitive questions

(i) In general

The Commissioner for Education Statistics may decline to make available through public means, such as posting on the Internet, distribution to the media, distribution through public agencies, or in response to a request under section 552 of title 5, for a period, not to exceed 10 years after initial use, cognitive questions that the Commissioner for Education Statistics intends to reuse in the future.

(ii) Extension

Notwithstanding clause (i), the Commissioner for Education Statistics may decline to make cognitive questions available as described in clause (i) for a period longer than 10 years if the Commissioner for Education Statistics determines such additional period is necessary to protect the security and integrity of long-term trend data.

(3) Personally identifiable information

(A) In general

The Commissioner for Education Statistics shall ensure that all personally identifiable information about students, their academic achievement, and their families, and that information with respect to individual schools, remains confidential, in accordance with section 552a of title 5.

(B) Prohibition

The Assessment Board, the Commissioner for Education Statistics, and any contractor or subcontractor shall not maintain any system of records containing a student's name, birth information, Social Security number, or parents' name or names, or any other personally identifiable information.

(4) Penalties

Any unauthorized person who knowingly discloses, publishes, or uses assessment questions, or complete and current assessment instruments of any assessment authorized under this section may be fined as specified in section 3571 of title 18 or charged with a class E felony.

(d) Participation**(1) Voluntary participation**

Participation in any assessment authorized under this section shall be voluntary for students, schools, and local educational agencies.

(2) Student participation

Parents of children selected to participate in any assessment authorized under this section shall be informed before the administration of any authorized assessment, that their child may be excused from participation for any reason, is not required to finish any authorized assessment, and is not required to answer any test question.

(3) State participation**(A) Voluntary**

Participation in assessments authorized under this section, other than reading and mathematics in grades 4 and 8, shall be voluntary.

(B) Agreement

For reading and mathematics assessments in grades 4 and 8, the Secretary shall enter into an agreement with any State carrying out an assessment for the State under this section. Each such agreement shall contain provisions designed to ensure that the State will participate in the assessment.

(4) Review

Representatives of State educational agencies and local educational agencies or the chief State school officer shall have the right to review any assessment item or procedure of any authorized assessment upon request in a manner consistent with subsection (c), except the review described in subparagraph (2)(C) of subsection (c) shall take place in consultation with the representatives described in this paragraph.

(e) Student achievement levels**(1) Achievement levels**

The Assessment Board shall develop appropriate student achievement levels for each grade or age in each subject area to be tested under assessments authorized under this section, except the trend assessment described in subsection (b)(2)(F).

(2) Determination of levels**(A) In general**

Such levels shall—

(i)¹ be determined by—

(I) identifying the knowledge that can be measured and verified objectively using widely accepted professional assessment standards; and

(II) developing achievement levels that are consistent with relevant widely accepted professional assessment standards and based on the appropriate level of subject matter knowledge for grade levels to be assessed, or the age of the students, as the case may be.

(B) National consensus approach

After the determinations described in subparagraph (A), devising a national consensus approach.

(C) Trial basis

The achievement levels shall be used on a trial basis until the Commissioner for Education Statistics determines, as a result of an evaluation under subsection (f), that such levels are reasonable, valid, and informative to the public.

(D) Status

The Commissioner for Education Statistics and the Board shall ensure that reports using such levels on a trial basis do so in a manner that makes clear the status of such levels.

(E) Updates

Such levels shall be updated as appropriate by the Assessment Board in consultation with the Commissioner for Education Statistics.

(3) Reporting

After determining that such levels are reasonable, valid, and informative to the public, as the result of an evaluation under subsection (f), the Commissioner for Education Statistics shall use such levels or other methods or indicators for reporting results of the National Assessment and State assessments.

(4) Review

The Assessment Board shall provide for a review of any trial student achievement levels under development by representatives of State educational agencies or the chief State school officer in a manner consistent with subsection (c), except the review described in paragraph (2)(C) of such subsection shall take place in consultation with the representatives described in this paragraph.

(f) Review of National and State assessments**(1) Review****(A) In general**

The Secretary shall provide for continuing review of any assessment authorized under this section, and student achievement levels, by one or more professional assessment evaluation organizations.

(B) Issues addressed

Such continuing review shall address—

(i) whether any authorized assessment is properly administered, produces high quality data that are valid and reliable, is consistent with relevant widely accepted professional assessment standards, and produces data on student achievement that are not otherwise available to the State (other than data comparing participating States to each other and the Nation);

¹ So in original. No cl. (ii) has been enacted.

(ii) whether student achievement levels are reasonable, valid, reliable, and informative to the public;²

(iii) whether any authorized assessment is being administered as a random sample and is reporting the trends in academic achievement in a valid and reliable manner in the subject areas being assessed;

(iv) whether any of the test questions are biased, as described in section 9621(e)(4) of this title; and

(v) whether the appropriate authorized assessments are measuring, consistent with this section, reading ability and mathematical knowledge.

(2) Report

The Secretary shall report to the Committee on Education and the Workforce of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate, the President, and the Nation on the findings and recommendations of such reviews.

(3) Use of findings and recommendations

The Commissioner for Education Statistics and the Assessment Board shall consider the findings and recommendations of such reviews in designing the competition to select the organization, or organizations, through which the Commissioner for Education Statistics carries out the National Assessment.

(g) Coverage agreements

(1) Department of Defense schools

The Secretary and the Secretary of Defense may enter into an agreement, including such terms as are mutually satisfactory, to include in the National Assessment elementary schools and secondary schools operated by the Department of Defense.

(2) Bureau of Indian Affairs schools

The Secretary and the Secretary of the Interior may enter into an agreement, including such terms as are mutually satisfactory, to include in the National Assessment schools for Indian children operated or supported by the Bureau of Indian Affairs.

(Pub. L. 107-279, title III, §303, formerly Pub. L. 103-382, title IV, §411, Oct. 20, 1994, 108 Stat. 4036; Pub. L. 107-110, title VI, §602(a), Jan. 8, 2002, 115 Stat. 1898; renumbered Pub. L. 107-279, title III, §303, and amended Pub. L. 107-279, title IV, §401(d), Nov. 5, 2002, 116 Stat. 1984.)

CODIFICATION

Section was formerly classified to section 9010 of this title prior to renumbering by Pub. L. 107-279.

PRIOR PROVISIONS

A prior section 303 of Pub. L. 107-279 was renumbered section 305 and is classified to section 9624 of this title.

AMENDMENTS

2002—Pub. L. 107-110 amended section generally, restating and expanding provisions and inserting headings.

Subsec. (a). Pub. L. 107-279, §401(d)(3), substituted “section 9621” for “section 9011” and struck out “and

with the technical assistance of the Advisory Council established under section 9006 of this title,” before “carry out”.

Pub. L. 107-279, §401(d)(2), substituted “Assessment Board” for “National Assessment Governing Board”.

Pub. L. 107-279, §401(d)(1), substituted “Commissioner for Education Statistics” for “Commissioner”.

Subsec. (b)(1). Pub. L. 107-279, §401(d)(4)(A), inserted “of” after “academic achievement and reporting”.

Subsec. (b)(2), (3)(A). Pub. L. 107-279, §401(d)(1), substituted “Commissioner for Education Statistics” for “Commissioner” in introductory provisions.

Subsec. (b)(3)(A)(i). Pub. L. 107-279, §401(d)(4)(B)(i), substituted “paragraphs (2)(B) and (2)(E)” for “paragraphs (1)(B) and (1)(E)”.

Subsec. (b)(3)(A)(ii). Pub. L. 107-279, §401(d)(4)(B)(ii), substituted “paragraph (2)(C)” for “paragraph (1)(C)”.

Subsec. (b)(3)(A)(iii). Pub. L. 107-279, §401(d)(4)(B)(iii), substituted “paragraph (2)(D)” for “paragraph (1)(D)”.

Subsec. (b)(3)(A)(iv). Pub. L. 107-279, §401(d)(1), substituted “Commissioner for Education Statistics” for “Commissioner”.

Subsec. (b)(5). Pub. L. 107-279, §401(d)(4)(C), substituted “subsection (c)(3)” for “subsection (c)(2)” in introductory provisions.

Pub. L. 107-279, §401(d)(1), substituted “Commissioner for Education Statistics” for “Commissioner” in introductory provisions.

Subsec. (b)(6). Pub. L. 107-279, §401(d)(1), substituted “Commissioner for Education Statistics” for “Commissioner”.

Subsec. (c)(2). Pub. L. 107-279, §401(d)(2), substituted “Assessment Board” for “National Assessment Governing Board” wherever appearing.

Pub. L. 107-279, §401(d)(1), substituted “Commissioner for Education Statistics” for “Commissioner” wherever appearing.

Subsec. (c)(2)(D). Pub. L. 107-279, §401(d)(5), substituted “subparagraph (C)” for “subparagraph (B)”.

Subsec. (c)(3). Pub. L. 107-279, §401(d)(1), substituted “Commissioner for Education Statistics” for “Commissioner” in subpars. (A) and (B).

Subsec. (c)(3)(B). Pub. L. 107-279, §401(d)(2), substituted “Assessment Board” for “National Board”.

Subsec. (e)(1). Pub. L. 107-279, §401(d)(2), substituted “Assessment Board” for “National Assessment Governing Board”.

Subsec. (e)(2). Pub. L. 107-279, §401(d)(1), substituted “Commissioner for Education Statistics” for “Commissioner” wherever appearing.

Subsec. (e)(2)(E). Pub. L. 107-279, §401(d)(2), substituted “Assessment Board” for “National Assessment Governing Board”.

Subsec. (e)(3). Pub. L. 107-279, §401(d)(1), substituted “Commissioner for Education Statistics” for “Commissioner”.

Subsec. (e)(4). Pub. L. 107-279, §401(d)(6), substituted “paragraph (2)(C) of such subsection” for “subparagraph (2)(C)”.

Pub. L. 107-279, §401(d)(2), substituted “Assessment Board” for “National Assessment Governing Board”.

Subsec. (f)(1)(B)(iv). Pub. L. 107-279, §401(d)(7), substituted “section 9621(e)(4)” for “section 9011(e)(4)”.

Subsec. (f)(3). Pub. L. 107-279, §401(d)(2), substituted “Assessment Board” for “National Assessment Governing Board”.

Pub. L. 107-279, §401(d)(1), substituted “Commissioner for Education Statistics” for “Commissioner” in two places.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107-110 effective Jan. 8, 2002, except with respect to certain noncompetitive programs and competitive programs, see section 5 of Pub. L. 107-110, set out as an Effective Date note under section 6301 of this title.

§ 9623. Definitions

In this subchapter:

² So in original.