STATE OF OKLAHOMA

2nd Session of the 55th Legislature (2016)

SENATE BILL 1463 By: Dossett

AS INTRODUCED

An Act relating to student testing; amending 70 O.S. 2011, Section 11-103.6a, as amended by Section 3, Chapter 430, O.S.L. 2014 (70 O.S. Supp. 2015, Section 11-103.6a), which relates to review of subject matter standards; modifying the State Board of Education's authority over certain assessments; amending 70 O.S. 2011, Section 1210.508, as last amended by Section 8, Chapter 430, O.S.L. 2014 (70 O.S. Supp. 2015, Section 1210.508), which relates to criterion-referenced tests; removing reference to certain subject matter tests; removing language requiring field testing of certain assessments; updating references; directing students beginning with certain class to demonstrate mastery on certain subject matter standards; directing the State Board of Education to adopt certain assessment or assessments; directing the Commission for Educational Quality and Accountability to set certain performance levels and cut scores; providing for remediation and intervention of certain students; providing for adoption of alternative assessments; providing for assessment of students on an individualized education program; directing the Oklahoma School for the Blind and the Oklahoma School for the Deaf to be considered certain agencies for certain purpose; providing for assessment of English language learners; allowing certain students to re-enroll to obtain a diploma; authorizing the State Board of Education to enter into certain contract; directing the State Board of Education to promulgate rules; providing for codification; and providing effective dates.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 70 O.S. 2011, Section 11-103.6a, as amended by Section 3, Chapter 430, O.S.L. 2014 (70 O.S. Supp. 2015, Section 11-103.6a), is amended to read as follows:

Section 11-103.6a. A. Beginning with the 2014-15 school year, each area of subject matter standards, except for standards for career and technology education adopted pursuant to Section 14-103 of this title, shall be adopted by the State Board of Education and shall be subject to legislative review and approval as provided for in Section ~~4~~ 11-103.6a-1 of this ~~act~~ title. The subject matter standards shall be implemented statewide by every public school district in this state. The subject matter standards shall be thoroughly reviewed by the State Board every six (6) years according to and in coordination with the existing subject area textbook adoption cycle. After review, the State Board shall adopt any revisions in such subject matter standards deemed necessary to achieve further improvements in the quality of education for the students of this state. Any revisions adopted by the State Board of Education shall be subject to review and approval as provided for in Section ~~4~~ 11-103.6a-1 of this ~~act~~ title. The adoption of subject matter standards or revisions to the standards by the State Board of Education pursuant to this section shall not be promulgated as rules and shall not be subject to Article I of the Administrative Procedures Act.

B. 1. In addition to the requirements set forth in subsection A of this section, on or before August 1, 2016, the State Board of Education, in consultation with the State Regents for Higher Education, the State Board of Career and Technology Education and the Oklahoma Department of Commerce, shall adopt subject matter standards for English Language Arts and Mathematics which are college- and career-ready and will replace current standards. To be considered college- and career-ready, the standards shall be evaluated by the State Department of Education, the State Regents for Higher Education, the State Board of Career and Technology Education and the Oklahoma Department of Commerce and be determined to be such that the standards will address the goals of reducing the need for remedial coursework at the postsecondary level and increasing successful completion of postsecondary education. The subject matter standards ~~and corresponding student assessments~~ for English Language Arts and Mathematics shall be solely approved and controlled by the state through the State Board of Education, and the corresponding student assessments for English Language Arts and Mathematics shall be solely approved by the state through the State Board of Education.

2. ~~Upon the effective date of this act~~ On June 5, 2014, the State Board of Education shall begin the process of adopting the English Language Arts and Mathematics standards and shall provide reasonable opportunity, consistent with best practices, for public

comment on the revision of the standards, including but not limited to comments from students, parents, educators, organizations representing students with disabilities and English language learners, higher education representatives, career technology education representatives, subject matter experts, community-based organizations, Native American tribal representatives and business community representatives.

3. Until the statewide student assessments for English Language Arts and Mathematics are implemented as provided for in paragraph 1 of subsection C of this section, the State Board of Education shall implement the subject matter standards for English Language Arts and Mathematics which were in place prior to the revisions adopted by the Board in June 2010.

4. Upon the effective date of this act, the State Board of Education shall seek certification from the State Regents for Higher Education that the subject matter standards for English Language Arts and Mathematics which were in place prior to the revisions adopted by the Board in June 2010 are college- and career-ready as defined in the Federal Elementary and Secondary Education Act (ESEA) Flexibility document issued by the United States Department of Education and referenced in Option B of Principle 1: College and Career-Ready Expectations for All Students. The State Regents shall provide the Board a detailed description of the certification process and results, including a list of deficiencies if the State

Regents conclude that the standards are not college- and career-ready. The Board shall post all documents, materials, reports, descriptions and correspondence produced by the State Regents or used by the State Regents in the certification process on the website for the State Department of Education.

C. 1. On or before the 2017-18 school year, the State Board of Education, in consultation with the State Regents for Higher Education, the State Board of Career and Technology Education and the Oklahoma Department of Commerce, shall direct the process of the development of annual high-quality statewide student assessments for English Language Arts and Mathematics as provided for in Section 1210.508 of this title that align with the college- and career-ready subject matter standards developed pursuant to subsection B of this section.

2. The statewide student assessments for English Language Arts and Mathematics shall continue to assess standards and objectives found in the subject matter standards for English Language Arts and Mathematics which were in place prior to the revisions adopted by the Board in June 2010 and the test blueprints shall continue to align to the standards and objectives found in such subject matter standards for English Language Arts and Mathematics until the new assessments are implemented as provided for in paragraph 1 of this subsection.

D. 1. The State Board of Education shall not enter into any agreement, memorandum of understanding or contract with any federal agency or private entity which in any way cedes or limits state discretion or control over the process of development, adoption or revision of subject matter standards ~~and~~ or state discretion over the process of development, adoption or revision of corresponding student assessments in the public school system, including, but not limited to, agreements, memoranda of understanding and contracts in exchange for funding for public schools and programs. If the State Board of Education is a party to such an agreement, memorandum of understanding or contract on the effective date of this act, the State Board of Education shall initiate necessary efforts to amend the agreement, memorandum of understanding or contract to comply with the requirements of this subsection.

2. Nothing in this section shall be construed to prohibit the State Board of Education from seeking and being granted a waiver from federal law, provided that the conditions for the waiver do not require the state to cede or limit its discretion or control over the process of development, adoption or revision of subject matter standards ~~and~~ or discretion over the process of development, adoption or revision of corresponding statewide student assessments.

3. The State Department of Education may participate in a multistate or multigovernmental cooperative pursuant to the requirements of the Oklahoma Central Purchasing Act, but shall not

bind the state, contractually or otherwise, to the authority of any other state, organization or entity which may supersede the authority of the State Board of Education.

E. The content of all subject matter standards ~~and corresponding student assessments~~ shall be solely approved and controlled by the state through the State Board of Education, and corresponding student assessments shall be solely approved by the state through the State Board of Education. The State Board of Education shall maintain independence of all subject matter standards referenced in Section 11-103.6 of this title and corresponding statewide student assessments and shall not relinquish authority over Oklahoma subject matter standards and corresponding statewide student assessments. Nothing in this section shall prohibit benchmarking the state subject matter standards and corresponding student assessments with those of other states or nations to allow comparison of Oklahoma subject matter standards and corresponding student assessments with those of other states and nations.

F. School districts shall exclusively determine the instruction, curriculum, reading lists and instructional materials and textbooks, subject to any applicable provisions or requirements as set forth in law, to be used in meeting the subject matter standards. School districts may, at their discretion, adopt

supplementary student assessments which are in addition to the statewide student assessments.

G. 1. Upon completion of the adoption of English Language Arts and Mathematics subject matter standards pursuant to subsection B of this section, the State Board of Education shall compare such English Language Arts and Mathematics standards with the English Language Arts and Mathematics standards that were adopted by the State Board of Education prior to implementation of this act. The State Board of Education shall consider public comments, the use of best practices, evidence and research in the evaluation of both sets of standards. The State Board of Education shall compare the standards in the areas of:

a. effective preparation for active citizenship and postsecondary education or the workforce,

b. subject matter content,

c. sequencing of subject matter content and relationship to measurement of student performance and the application of subject matter standards,

d. developmental appropriateness of grade-level expectations, academic content and instructional rigor,

e. clarity for educators and parents,

f. exemplars tied to the standards,

g. measurability of student proficiency in the subject matter,

h. pedagogy,

i. development of critical thinking skills, and

j. demonstration of application of acquired knowledge and skills.

2. Upon completion of the comparison of the English Language Arts and Mathematics subject matter standards, the State Board of Education shall submit to the Governor, the Speaker of the House of Representatives, the President Pro Tempore of the Senate, the Minority Leader of the House of Representatives and the Minority Leader of the Senate a report outlining the results of the comparison of the standards.

H. All subject matter standards and corresponding statewide student assessments adopted by the State Board of Education shall be carefully circumscribed to reflect direct application to subject matter proficiency and shall not include standards or assessment questions that are designed to collect or measure noncognitive, emotional or psychological characteristics, attributes or skills of students.

I. Any rule, including but not limited to Rules 210:15-4-1 through 210:15-4-3 of the Oklahoma Administrative Code, which conflicts with the requirements of this section, shall be amended or

repealed by the State Board of Education as necessary to comply with the requirements of this section.

SECTION 2. AMENDATORY 70 O.S. 2011, Section 1210.508, as last amended by Section 8, Chapter 430, O.S.L. 2014 (70 O.S. Supp. 2015, Section 1210.508), is amended to read as follows:

Section 1210.508. A. 1. The State Board of Education shall develop and administer a series of criterion-referenced tests designed to indicate whether the subject matter standards, as defined by the State Board of Education, which Oklahoma public school students are expected to have attained have been achieved. The Board may develop and administer any criterion-referenced test in any subject not required by federal law, contingent upon the availability of funding. Students who do not perform at least at the proficient level on tests shall be remediated, subject to the availability of funding.

2. Contingent upon the availability of state and federal funds, the Board, in accordance with federal law, shall administer criterion-referenced tests for grades three and four in:

a. reading, and

b. mathematics.

3. Contingent upon the availability of funds, the Board shall administer criterion-referenced tests for grade five in:

a. reading,

b. mathematics,

c. science,

d. social studies, which shall consist of the history, Constitution and government of the United States, and geography, and

e. writing of English.

4. Contingent upon the availability of state and federal funds, the Board, in accordance with federal law, shall administer criterion-referenced tests for grades six and seven in:

a. reading, and

b. mathematics.

In addition, the Board shall administer a criterion-referenced test in geography in grade seven.

5. Contingent upon the availability of funds, the Board shall administer criterion-referenced tests for grade eight in:

a. reading,

b. mathematics,

c. science,

d. social studies, which shall consist of the history, Constitution, and government of the United States, and

e. writing of English.

The Board shall administer the tests for grade eight in reading and mathematics online with raw score test results reported immediately and complete results reported in less than two (2) weeks beginning in the 2007-08 school year.

6. Except as otherwise provided for in Section ~~1210.523~~ 1210.528 of this title, each student who completes the instruction for English II, ~~English III, United States History,~~ Biology I~~,~~ and Algebra I~~, Geometry, and Algebra II~~ at the secondary level shall complete an ~~end-of-instruction test, when implemented,~~ assessment or assessments adopted by the State Board of Education to measure for attainment in the appropriate subject matter standards in order to graduate from a public high school with a standard diploma. All students shall take the tests prior to graduation, unless otherwise exempt by law. The State Board of Education shall administer the criterion-referenced tests. ~~The Board shall develop and field test the end-of-instruction tests in English III, Geometry, and Algebra II during the 2006-07 school year, implement the tests during the 2007-08 school year, and administer them each year thereafter. The Board shall administer the multiple choice portion of the end-of-instruction tests online with raw score test results reported immediately and complete results reported in less than two (2) weeks beginning in the 2008-09 school year.~~

~~The end-of-instruction tests shall serve the purpose of the criterion-referenced tests as provided in paragraph 1 of this subsection.~~ The English II ~~and English III~~ ~~end-of-instruction tests~~ assessment adopted by the State Board of Education shall include a writing component. Students who do not score at least at the proficient level shall be afforded the opportunity to retake each

test up to three (3) times each calendar year until at least achieving at the proficient level. ~~In order to provide an indication of the levels of competency attained by the student in a permanent record for potential future employers and institutions of higher education, for students who enter the ninth grade in or prior to the 2007-08 school year, school districts shall report the highest-achieved state test performance level on the end-of-instruction tests on the student's high school transcript.~~ Beginning with students who enter the ~~ninth~~ twelfth grade in the ~~2008-09~~ 2017-2018 school year, school districts shall report the highest-achieved ~~state test~~ performance level on the ~~end-of-instruction tests~~ assessment or assessments adopted by the State Board of Education and any business and industry-recognized endorsements attained on the student's high school transcript. Any student at the middle school level who completes the instruction in a secondary course specified in this paragraph shall be administered the appropriate ~~end-of-instruction test~~ assessment.

7. a. Each school district shall administer to each student in the school district in grades three through eight an assessment designed to assess the student in the fine arts area in which the student has received instruction.

b. Each school district shall prepare an annual report for approval by the State Board of Education outlining

the fine arts assessment strategies used by the district, when the assessments were administered, how many students were assessed during the previous year, and the results of the assessments.

B. 1. All criterion-referenced tests required by this section shall measure academic competencies in correlation with the subject matter standards adopted by the Board pursuant to Sections 11-103.6 and 11-103.6a of this title. The State Board of Education shall evaluate the subject matter standards to ensure the competencies reflect high standards, are specific, well-defined, measurable, challenging, and will prepare elementary students for next-grade-level course work and secondary students for postsecondary studies at institutions of higher education or technology center schools without the need for remediation. All subject matter standards shall reflect the goals as set forth in Section 11-103.6 of this title and of improving the state average ACT score.

2. The State Department of Education shall annually evaluate the results of the criterion-referenced tests. The State Board of Education shall ensure that test results are reported to districts in a manner that yields detailed, diagnostic information for the purpose of guiding instruction and student remediation. As improvements are made to the criterion-referenced tests required by this section, the Board shall seek to increase the depth of knowledge assessed for each subject. The State Board of Education

shall seek to ensure that data yielded from the tests required in this section are utilized at the school district level to prescribe reinforcement and/or remediation by requiring school districts to develop and implement a specific program of improvement based on the test results.

3. The State Board of Education in coordination with the Office of Educational Quality and Accountability shall review, realign, and recalibrate, as necessary, the tests in reading and mathematics in third through eighth grade and the ~~end-of-instruction tests~~ assessments adopted by the State Board of Education. The Commission for Educational Quality and Accountability shall determine the cut scores for the performance levels on the ~~end-of-instruction tests~~ assessments developed pursuant to paragraph 6 of subsection A of this section. The Commission shall conduct an ongoing review to compare the ~~end-of-instruction test~~ assessment content and performance descriptors with those of other states. Upon receipt of the review, the Commission may adjust the cut scores as necessary.

4. The State Board of Education, for the purposes of conducting reliability and validity studies, monitoring contractor adherence to professionally accepted testing standards, and providing recommendations for testing program improvement, shall retain the services of an established, independent agency or organization that is nationally recognized for its technical expertise in educational testing but is not engaged in the development of aptitude or

achievement tests for elementary or secondary level grades. These national assessment experts shall annually conduct studies of the reliability and validity of the ~~end-of-instruction tests~~ assessments administered pursuant to this section. Validity studies shall include studies of decision validity and concurrent validity.

C. 1. The State Board of Education shall set the testing window dates for each criterion-referenced test required in paragraphs 1 through 5 of subsection A of this section for grades three through eight so that, with the exception of the writing assessments, the tests are administered to students no earlier than April 10 each year and so that the test results are reported back to school districts in a timely manner. Each criterion-referenced test required in paragraph 6 of subsection A of this section may be administered to students at a time set by the State Board of Education as near as possible to the end of the course; provided, if a school district is unable to administer the tests online to all students taking the test for the first time and all students retaking the test during the testing window time set by the Board, the school district may elect to administer any of the tests to students retaking the test at any time not more than two (2) weeks prior to the start of the testing window time set by the Board. All results and reports of the criterion-referenced test series required in paragraphs 1 through 5 of subsection A of this section for grades three through eight shall be returned to each school district prior

to the beginning of the next school year. The vendor shall provide a final electronic data file of all school site, school district, and state results to the State Department of Education and the Office of Educational Quality and Accountability prior to September 1 of each year. The Department shall forward the final data files for each school district and each school site in that district to the school district. The Board shall ensure the contract with the testing vendor includes a provision that the vendor report test results directly to the Office of Educational Quality and Accountability at the same time it is reported to the Board.

2. State, district, and site level results of all tests required in this section shall be disaggregated by gender, race, ethnicity, disability status, migrant status, English proficiency, and status as economically disadvantaged, except that such disaggregation shall not be required in a case in which the number of students in a category is insufficient to yield statistically reliable information or the results would reveal personally identifiable information about an individual student. Each school site shall notify the student's parents of the school's performance levels in the Oklahoma School Testing Program as reported in the Oklahoma Educational Indicators Program at the end of each school year.

D. The State Board of Education shall be responsible for the development, field-testing, and validation of the criterion-

referenced test series required in subsection A of this section. In the interest of economy the Board may participate in a multistate or multigovernmental cooperative pursuant to the requirements of The Oklahoma Central Purchasing Act, but shall not bind the state, contractually or otherwise, to the authority of any other state, organization or entity which may supersede the authority of the Board, for the purpose of adapting criterion-referenced tests, to the extent that such tests are appropriate for use in the testing program to be administered to Oklahoma students.

E. The State Board of Education shall develop, administer, and incorporate as a part of the Oklahoma School Testing Program, other testing programs or procedures, including appropriate accommodations for the testing of students with disabilities as required by the Individuals with Disabilities Education Act (IDEA), 20 USC, Section 1400 et seq.

F. For purposes of developing and administering alternate assessments for students with the most significant cognitive disabilities, the State Board of Education shall not be subject to subsections D and E of Section 11-103.6a of this title.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1210.528 of Title 70, unless there is created a duplication in numbering, reads as follows:

A. Except as provided in subsections D and E of this section, beginning with students in the 2017-2018 high school graduating

class, every student shall demonstrate mastery of the state academic content standards outlined in Section 11-103.6 of Title 70 of the Oklahoma Statutes in order to graduate from a public high school with a standard diploma. To demonstrate mastery, the student shall attain at least a proficient score on the assessment or assessments adopted by the State Board of Education pursuant to subsection B of this section.

B. The State Board of Education shall designate an assessment or assessments used by institutions of higher education to determine college readiness. The assessment or assessments shall fulfill the requirements of the Elementary and Secondary Education Act of 2015, P.L. No. 114-95, also known as the Every Student Succeeds Act of 2015, as amended or reauthorized.

C. The Commission for Educational Quality and Accountability shall set the performance levels and corresponding cut scores for the assessment or assessments adopted by the State Board of Education.

D. Students who do not attain at least a proficient score on the assessment or assessments adopted by the State Board of Education shall be provided remediation or intervention and the opportunity to take any alternative assessment or assessments adopted by the State Board of Education pursuant to subsection E of this section.

E. Students who do not meet the requirements of subsection A of this section may graduate from a public high school with a standard diploma by demonstrating mastery of state academic content standards by an alternative assessment or assessments approved by the State Board of Education.

F. 1. Students who have an individualized education program (IEP) pursuant to the Individuals with Disabilities Education Act shall have an appropriate statement on the students IEP requiring administration of the assessment with or without accommodations or an alternate assessment. Any accommodations normally employed for the assessment shall be approved by the State Board of Education and be provided for in the IEP. All documentation for each student shall be on file in the school prior to administration of the assessment.

2. Students with disabilities whose IEP indicates that the student is to be assessed with alternate achievement standards through the Oklahoma Alternate Assessment Program (OAAP) may be eligible to graduate from a public high school with a standard diploma after failing to meet the requirements of subsection A of this section upon the determination of the school district that the student meets the following criteria:

a. obtains a written recommendation from the student's teacher of record in consultation with the teacher in each subject in which the student failed to meet the

requirements of subsection A of this section. The recommendation shall be supported by the principal and by documentation demonstrating the acquired knowledge of the student by alternate measures as required by the IEP,

b. completes remediation opportunities to the extent required by the IEP,

c. retakes the exam in each subject in which the student failed to meet the requirements of subsection A of this section if the IEP requires retake opportunities,

d. maintains at least a C average or the equivalent in each subject in which the student failed to meet the requirements of subsection A of this section, and

e. meets all other graduation requirements of the school district in which the student is enrolled.

3. The Oklahoma School for the Blind and the Oklahoma School for the Deaf shall be considered local education agencies solely for the purposes of purchasing, administering and obtaining test results under this section for the students attending their schools.

4. Students identified as English language learners shall be assessed in a valid and reliable manner with the state academic assessments with acceptable accommodations as necessary or, to the extent practicable, with alternate assessments aligned to the state assessment provided by the school district in the language and form

most likely to yield accurate data of the student's knowledge of the content areas.

G. Students who have been denied a standard diploma by the school district in which the student is or was enrolled for failing to meet the requirements of this section may re-enroll in the school district that denied the student a standard diploma following the denial of a standard diploma. The student shall be provided remediation or intervention and the opportunity to take any alternative assessment or assessments adopted by the State Board of Education pursuant to subsection E of this section. Students who re-enroll in the school district to meet the graduation requirements of this section shall be exempt from the hourly instructional requirements of Section 1-111 of this title and the six-period enrollment requirements of Section 11-103.6 of this title.

H. The State Board of Education shall be authorized to contract with an entity to develop and advise on the implementation of a communications campaign to build public understanding of and support for the testing requirements of this section.

I. The State Board of Education shall promulgate rules providing for implementation of this act, which shall include but not be limited to:

1. Rules establishing a timeline for implementation; and

2. Rules establishing an appeal process for students who have been denied a standard diploma by the school district in which the

student is or was enrolled for failing to meet the requirements of this section. A student who has been denied a standard diploma shall have thirty (30) days after denial of the standard diploma in which to file a petition for an appeal to the State Board of Education. The State Board of Education shall take action on a petition for an appeal no later than forty-five (45) days after receiving the petition. The State Board of Education shall collect data by school site and school district on the number of students petitioning for an appeal and the number of appeals approved by the State Board of Education pursuant to this subsection. Beginning October 1, 2018, and each October 1 thereafter, the State Board of Education shall provide an annual report of the data to the Governor, the President Pro Tempore of the Senate and the Speaker of the House of Representatives.

SECTION 4. Sections 1 and 3 of this act shall become effective November 1, 2016.

SECTION 5. Section 2 of this act shall become effective July 1, 2017.

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