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State Representative
House District 43
North and Northeast Portland

October 22, 2015

Good morning Chair Summer and members of the Board of Education. I am Lew Frederick, State Representative for House District 43, North and Northeast Portland, and a Chief Sponsor of House Bill 2655.

You have a proposal before you today to limit the scope of what is covered by the law, and the materials provided to you say that the decision to do so is based on a review of legislative history and intent. I do not know what legislative history or intent was reviewed, but it is not the history I lived during the session, or the intent described in testimony and arguments in favor of the bill.

I should point out that another bill, HB 2713, which calls for an audit of the impacts of standardized tests, was amended to specifically limit its scope to the consortium backed tests, the SBAC. The rationale for that had to do with the capacity and scope of practice of the auditor's division of the Secretary of State's office, and had nothing to do with arguments regarding the application of a universal mandate for participation. I raise this because it was not that legislators were unaware of the distinction. We made that distinction in HB 2713, and did not in HB 2655, and the inclusive language in HB 2655 was by design.

Given the actual legislative history and intent, as well as the definitions provided in the law itself, the proposed rule should instead include *any* "standardized summative assessment that is identified by the Department of Education for administration in all of the school districts and public charter schools of this state," *to quote the law*. There is *no* justification for applying any other definition. The problems that have arisen with application of the current exemption rule [581-022-1910 (1)] to standardized summative assessments are not unique to the SBAC, although the rollout of the SBAC has brought them into clearer focus.

I recall that, unless your practice has changed since I sat on that side of the table six years ago, you do not take testimony on items as they are considered in your agenda. I believe that the representation that this proposed rule reflects legislative history and intent is sufficiently wide of the mark to justify your holding over this adoption in order to receive additional information. I will try to give you somewhat of a flavor of the concerns that led to the passage of this bill now, and am happy to provide more comprehensive information to help inform your decision.

First, we wouldn't have this bill without significant professional and community dissent regarding these tests. An inflexible, universal mandate under these circumstances is damaging to the credibility of the public education enterprise. Second, the application of the exemption standard, "where necessary, to accommodate students' disabilities or religious beliefs," has been grossly inconsistent across the state. In some places that standard has been deemed to include ethical reasons or reasons of conscience. In others it has been deemed to require identification of a particular religious affiliation, and a particular religious doctrine. The procedures for requesting and confirming exemptions have varied across the state as well, with different deadlines and

notification practices. These issues apply to all tests subject to this standard, not just the SBAC. For example, the Kindergarten Assessment was part of the discussion throughout the process of passing this bill.

Now, there isn't time here to get deep into questions of the validity of these tests, but it should be noted that claims made about their ability to track preparation for "college and career readiness" are simply unsupported. It is not clear that these standards are "higher," as distinguished from simply harder. It is also not clear what these tests measure. There are disconnects at every logical step. I have seen test questions about which educated adults would dispute the correct answer. Subjecting children to answering such questions in a high stakes environment is not teaching "critical thinking"; it's just crazy making. And while the law requires the notice to parents to include "An explanation of the purpose and value of statewide summative assessments," I do not believe the legislature intended that to read as a marketing piece for the SBAC, as the draft I saw does. It attributes superpowers to these tests regarding both predicting the nature of college and careers in the future and driving some vague notion of school improvement. These are buzzwords, unmoored to the realities of child development or progress toward intellectual maturity.

Before I finish I have to address the question of compliance with federal mandates. I realize that the Oregon Department of Education is focused on compliance, and it is understandable that they would interpret this law in those terms. But I have met with members of Congress, and I can tell you that there is less appetite in Washington for continuing the participation mandate than there is in the Oregon Department of Education. ESEA reauthorization is likely to change things.

And Oregon would not be alone if there is a showdown with the US Department of Education over its authority to mandate programs and measures. But ultimately, the argument that this is required because it's mandatory is a bankrupt one. It is our job as policy makers to decide whether it's a *good idea*. Our responsibility is to our children and our communities.

Finally, I have to address the claim that universal administration of these tests will somehow help us "close the achievement gap." Those gaps are well documented. The question is, "What are we going to do about it?" I have seen at least 25 years of poor children and children of color used as human shields for the next shiny thing, the next attempt to "solve" education with some magic formula. Meanwhile, we have allowed *opportunity* gaps to grow.

I urge you to pull this item from the agenda, and send it back to staff for redrafting to reflect clear legislative intent.



Rep. Lew Frederick
House District 43
North and Northeast Portland

B-Engrossed House Bill 2655

Ordered by the Senate June 8
Including House Amendments dated April 14 and Senate Amendments
dated June 8

Sponsored by Representatives GORSEK, FREDERICK, Senator KNOPP; Representatives BARRETO, FAGAN, HUFFMAN, KOMP, LIVELY, MCLAIN, OLSON, PILUSO, WHISNANT, WILSON, Senator KRUSE (Presession filed.)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

Directs State Board of Education to adopt specified standards related to student education records.

Provides that parents have right to excuse student from statewide standardized summative assessment and that school districts must provide notice of that right to parents.

Provides that students must receive certain information related to statewide standardized summative assessments.

[Declares emergency, effective July 1, 2015.]

A BILL FOR AN ACT

1
2 Relating to education; creating new provisions; and amending ORS 326.565.

3 **Be It Enacted by the People of the State of Oregon:**

4 **SECTION 1.** ORS 326.565 is amended to read:

5 326.565. (1) The State Board of Education shall adopt by rule standards for the creation, use,
6 custody and disclosure, including access, of student education records *[that are]* held by a school
7 district or another public or private educational entity that provides educational services to
8 students in any grade from kindergarten through grade 12. Consistent with the requirements
9 of applicable state and federal law[.], the standards:

10 (a) Shall include requirements under which a school district or other educational entity
11 will transfer student education records pursuant to ORS 326.575.

12 (b) May be applied differently to persons 18 years of age or older.

13 (2) The *[state]* board shall distribute the rules that are adopted under subsection (1) of this
14 section to all school districts[.] and shall make the rules available on the website of the De-
15 partment of Education.

16 (3) *[The]* School districts shall make *[those rules]* the rules received under subsection (2) of
17 this section available to the public schools in the district and to the public. *[The state board may*
18 *differentiate the standards applicable to persons 18 years of age or older or enrolled in post-secondary*
19 *institutions. The standards shall include requirements under which public and private schools and ed-*
20 *ucation service districts transfer student education records pursuant to ORS 326.575.]*

21 **SECTION 2.** Section 3 of this 2015 Act is added to and made a part of ORS chapter 329.

22 **SECTION 3.** (1) This section shall be known and may be cited as the Student Assessment
23 Bill of Rights.

NOTE: Matter in boldfaced type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in boldfaced type.

1 (2) As used in this section:

2 (a) "Adult student" means a student of a public school or a public charter school who is
3 18 years of age or older or who is emancipated pursuant to ORS 419B.550 to 419B.558.

4 (b) "Parent" means a parent, legal guardian or person in parental relationship, as defined
5 in ORS 339.133, of a student of a public school or a public charter school.

6 (c) "Statewide summative assessment" means a standardized summative assessment that
7 is identified by the Department of Education for administration in all of the school districts
8 and public charter schools of this state.

9 (3) A parent or an adult student may annually choose to excuse the student from taking
10 a statewide summative assessment by:

11 (a) Completing a form established by the Department of Education as provided by sub-
12 section (4) of this section; and

13 (b) Submitting the completed form to the school district for the school that the student
14 attends.

15 (4) The Department of Education shall establish a form to excuse a student from taking
16 a statewide summative assessment. The form must have at least the following:

17 (a) An explanation of the right of a parent or an adult student to excuse the student from
18 taking a statewide summative assessment; and

19 (b) An explanation of the purpose and value of statewide summative assessments.

20 (5) At the beginning of each school year, each school district and public charter school
21 shall ensure that parents and adult students are provided with a notice about statewide
22 summative assessments. The notice shall be established by the Department of Education and
23 must include information about statewide summative assessments, the time frame when the
24 statewide summative assessments most likely will be administered and a student's or
25 parent's right to excuse the student from taking the statewide summative assessments.

26 (6)(a) At least 30 days prior to the administration of statewide summative assessments,
27 a school district or public charter school must send to parents and adult students a notice
28 about the statewide summative assessments. The notice must include:

29 (A) The purpose of the assessments and how the results of the assessments will be used;

30 (B) The specific days the statewide summative assessments will be administered;

31 (C) The amount of class time required for the statewide summative assessments;

32 (D) The learning targets that make up the assessments;

33 (E) The difference between good and poor performances on the assessments;

34 (F) When results of the assessments will be available to students; and

35 (G) Access to the form established as provided by subsection (4) of this section.

36 (b) Notwithstanding paragraph (a) of this subsection, the Department of Education may
37 waive the notice requirement for a school district or public charter school if a human-
38 created disaster or a natural disaster affects the ability of the school district or public
39 charter school to administer the statewide summative assessments and the statewide
40 summative assessments must be provided at a later date.

41 (7) School districts and public charter schools shall provide supervised study time for
42 students excused from the statewide summative assessments as provided by this section. The
43 study time shall be considered instructional time for purposes of rules adopted by the State
44 Board of Education.

45 (8) A student who is excused from the statewide summative assessments may not be

1 denied a diploma under ORS 329.451 if the student is able to satisfy all other requirements
2 for the diploma established under ORS 329.451.

3 (9) The results of a statewide summative assessment must be provided to students in a
4 timely manner and in a manner that is understandable by the student.

5 (10) If the rating on a school performance report is affected by the number of parents
6 and adult students who excuse students from taking a statewide summative assessment as
7 provided by this section, the Department of Education shall include on the school perform-
8 ance report:

9 (a) An indication that the rating was affected by a federal law requirement;

10 (b) A brief explanation of the federal law requirement that affected the rating; and

11 (c) The rating the school would have received if not for the federal law requirement.

12 **SECTION 4.** (1) Section 3 of this 2015 Act first applies to statewide summative assess-
13 ments administered for the 2015-2016 school year.

14 (2) Notwithstanding section 3 (5) of this 2015 Act and subsection (1) of this section, a
15 school district or public charter school is not required to ensure that parents and adult
16 students are provided with the notice described in section 3 (5) of this 2015 Act at the be-
17 ginning of the 2015-2016 school year. A school district or public charter school must ensure
18 that parents and adult students are provided with the notice described in section 3 (5) of this
19 2015 Act beginning with the 2016-2017 school year.

20 **SECTION 5.** Section 3 of this 2015 Act is amended to read:

21 **Sec. 3.** (1) This section shall be known and may be cited as the Student Assessment Bill of
22 Rights.

23 (2) As used in this section:

24 (a) "Adult student" means a student of a public school or a public charter school who is 18
25 years of age or older or who is emancipated pursuant to ORS 419B.550 to 419B.558.

26 (b) "Parent" means a parent, legal guardian or person in parental relationship, as defined in
27 ORS 339.133, of a student of a public school or a public charter school.

28 (c) "Statewide summative assessment" means a standardized summative assessment that is
29 identified by the Department of Education for administration in all of the school districts and public
30 charter schools of this state.

31 [(3) A parent or an adult student may annually choose to excuse the student from taking a state-
32 wide summative assessment by:]

33 [(a) Completing a form established by the Department of Education as provided by subsection (4)
34 of this section; and]

35 [(b) Submitting the completed form to the school district for the school that the student attends.]

36 [(4) The Department of Education shall establish a form to excuse a student from taking a state-
37 wide summative assessment. The form must have at least the following:]

38 [(a) An explanation of the right of a parent or an adult student to excuse the student from taking
39 a statewide summative assessment; and]

40 [(b) An explanation of the purpose and value of statewide summative assessments.]

41 [(5)] (3) At the beginning of each school year, each school district and public charter school
42 shall ensure that parents and adult students are provided with a notice about statewide summative
43 assessments. The notice shall be established by the Department of Education and must include in-
44 formation about statewide summative assessments, the time frame when the statewide summative
45 assessments most likely will be administered and a student's or parent's right to excuse the student

1 from taking the statewide summative assessments.

2 [(6)(a)] (4)(a) At least 30 days prior to the administration of statewide summative assessments,
3 a school district or public charter school must send to parents and adult students a notice about the
4 statewide summative assessments. The notice must include:

5 (A) The purpose of the assessments and how the results of the assessments will be used;

6 (B) The specific days the statewide summative assessments will be administered;

7 (C) The amount of class time required for the statewide summative assessments;

8 (D) The learning targets that make up the assessments;

9 (E) The difference between good and poor performances on the assessments; and

10 (F) When results of the assessments will be available to students.[: and]

11 [(G) Access to the form established as provided by subsection (4) of this section.]

12 (b) Notwithstanding paragraph (a) of this subsection, the Department of Education may waive
13 the notice requirement for a school district or public charter school if a human-created disaster or
14 a natural disaster affects the ability of the school district or public charter school to administer the
15 statewide summative assessments and the statewide summative assessments must be provided at a
16 later date.

17 [(7)] (5) School districts and public charter schools shall provide supervised study time for stu-
18 dents excused from the statewide summative assessments as provided by this section. The study time
19 shall be considered instructional time for purposes of rules adopted by the State Board of Education.

20 [(8)] (6) A student who is excused from the statewide summative assessments may not be denied
21 a diploma under ORS 329.451 if the student is able to satisfy all other requirements for the diploma
22 established under ORS 329.451.

23 [(9)] (7) The results of a statewide summative assessment must be provided to students in a
24 timely manner and in a manner that is understandable by the student.

25 [(10)] (8) If the rating on a school performance report is affected by the number of parents and
26 adult students who excuse students from taking a statewide summative assessment as provided by
27 this section, the Department of Education shall include on the school performance report:

28 (a) An indication that the rating was affected by a federal law requirement;

29 (b) A brief explanation of the federal law requirement that affected the rating; and

30 (c) The rating the school would have received if not for the federal law requirement.

31 **SECTION 6. (1) The amendments to section 3 of this 2015 Act by section 5 of this 2015**
32 **Act become operative on July 1, 2021.**

33 **(2) The amendments to section 3 of this 2015 Act by section 5 of this 2015 Act first apply**
34 **to statewide summative assessments administered for the 2021-2022 school year.**

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