

FACTS FOR PARENTS ON OPTING OUT OF STATE TESTS FOR 2022-2023



Fact Sheet No: 23-02 (Updates 22-04)

March 2023

As the next round of state tests approach, it is important to review the facts around opting out of state tests. Each year misinformation about the impact of opt-outs is presented as fact to parents, as school district officials attempt to convince parents to have their children take the state tests. This fact sheet attempts to clear up the misinformation by reviewing the federal requirements for participation in the state assessments and potential consequences of opting-out for districts and students.

NYSUT fully supports a parent's right to choose what is best for their children. There have been changes in state policies and laws that eliminate certain consequences of the state tests for students and teachers; however, these tests are still administered and used for "advisory" purposes and for identifying low-performing schools.

HOW DO YOU OPT YOUR CHILD OUT OF THE STATE TESTS

SED does not dispute a parent's right to opt their child out of the state tests but has not adopted a formal state policy. Therefore, the opt-out process is different in each district. You should check with your school principal or district administrator to find out the process in your district. If the district does not have a standard form, send the principal a letter stating the tests you do not want your child to take part in, and request the district provide a productive alternative activity if your child is attending school in person. All requests for opt-outs should be made in writing to ensure a paper trail should a question arise about whether you requested that your child not take the state tests. The letter should be provided to the school principal prior to the start of the state testing period. The sooner the letter is provided the less likely the district is to dispute your request. Some parents provide the letter on the first day of school.

FEDERAL REQUIREMENT FOR TESTING

The state's accountability system must comply with the requirements of the Federal Every Student Succeeds Act (ESSA). New York State must administer the ELA and mathematics assessments in grades 3-8; Regents English Language Arts, Algebra 1, Living Environment and Physical Setting/Earth Science; and, grades 5 and 8 science. The grades 3-8 ELA and mathematics assessments were originally intended to evaluate school and district programs. The 95 percent participation rate was first introduced to ensure that districts did not discourage lower-performing students from taking the tests.

CONSEQUENCES OF OPT-OUTS

One of the more persistent rumors is that students who opt-out will automatically receive a "level one" score that will become part of their permanent record. This is false. When reporting individual students that opt-out, districts use a code that indicates refusal and no score is reported for the child. These students will be considered to have no valid test score.¹

The assessments are used by some districts as one of the criteria for placement decisions and by the state to determine whether or not a student should receive Academic Intervention Services (AIS). However, actions by the state Legislature and Board of Regents have minimized how the assessments can be used.

- The 2014-15 state budget enacted laws that prohibit including the results of the grades 3-8 ELA and mathematics assessments on a student's permanent record until December 31, 2018. This provision of the law was extended in 2018 and was made permanent by the Board of Regents in April 2019.²

¹ SED 2021-22 SIRS Manual, see page 75 <http://www.p12.nysed.gov/irs/sirs/home.html>

² Section 35 of Part CCC of Chapter 59 of the Laws of New York and Section 30 of Part YYY of the 2019-2020 Enacted State Budget [S.1509-C/A.2009-C]

- Districts must notify parents that test results are not included in their student's permanent record but are being used for diagnostic purposes.
- Results may be used for promotion or placement decisions only if used as one of multiple measures and is not the primary factor.
- Districts must notify parents annually how placement decisions are made and how the policy was developed.
- The ability for districts to use the results as the only measure for remediation was removed by action of the Regents. Historically, students who performed below Level 3 (proficiency) would receive Academic Intervention Services (AIS). When SED rolled-out the Common Core Learning Standards (CCLS), school districts were provided additional flexibility to determine what services would be provided to students. Beginning with the 2019-20 school year, districts were required to implement a two-step identification process. Students who perform at or below a certain score on one or more of the state assessments in ELA or math would be identified initially. Districts then use a district-developed procedure that takes into consideration multiple measures of student performance. However, districts have the ability to provide services to any student determined, through a district-developed procedure, to be at risk of not achieving the state standards.³

Additional details are available in the NYSUT Fact Sheet Opting Out of State Tests on the nysut.org web site: <https://www.nysut.org/resources/all-listing/research/fact-sheets/fact-sheet-opting-out-educators>

3-09-23

³ <http://www.regents.nysed.gov/common/regents/files/617p12a1.pdf> and Commissioner's Regulations: <http://www.p12.nysed.gov/part100/pages/1002.html#ee>