Member Newsletter
Volume IV, Issue 3
February 2020

John Kozlowski, President
Joe DiTucci, 1st Vice President
Rob Allen, 2nd Vice President
Joe DiTucci, Professional Advancement Chair
Jacquelyn Lanpher, Secretary
Cheri Hall, Treasurer

Message from the President

Dear Colleagues,

I hope everyone had a restful and enjoyable break!

As many of you may already know, I recently submitted my letter of intent to retire at the end of this school year. This was a very difficult decision for a variety of reasons, but the main reason is that leading the STA is my passion.

When you entrusted me with the leadership of the STA fourteen years ago, I adopted three overarching goals. To protect and enhance the contractual benefits of the STA, to increase involvement in the STA, and to eventually leave the STA better than I found it. As I reflect on these goals, I am proud to say that all have been fulfilled. In fact, the leadership team of the STA has been working on a transition plan for the future leadership team of the STA for two years. We have focused on both a short and long-term transition plan. In the short term, 1st Vice-President, Joe DiTucci, will become president upon my retirement as I will be leaving half way through my current two-year term. In accordance with the STA Constitution By-laws, your Executive Council will vote to fill the 1st Vice-President position for next year after Joe becomes president. At the end of the 2020-21 school year, a general election will take place for all of the STA officer positions.

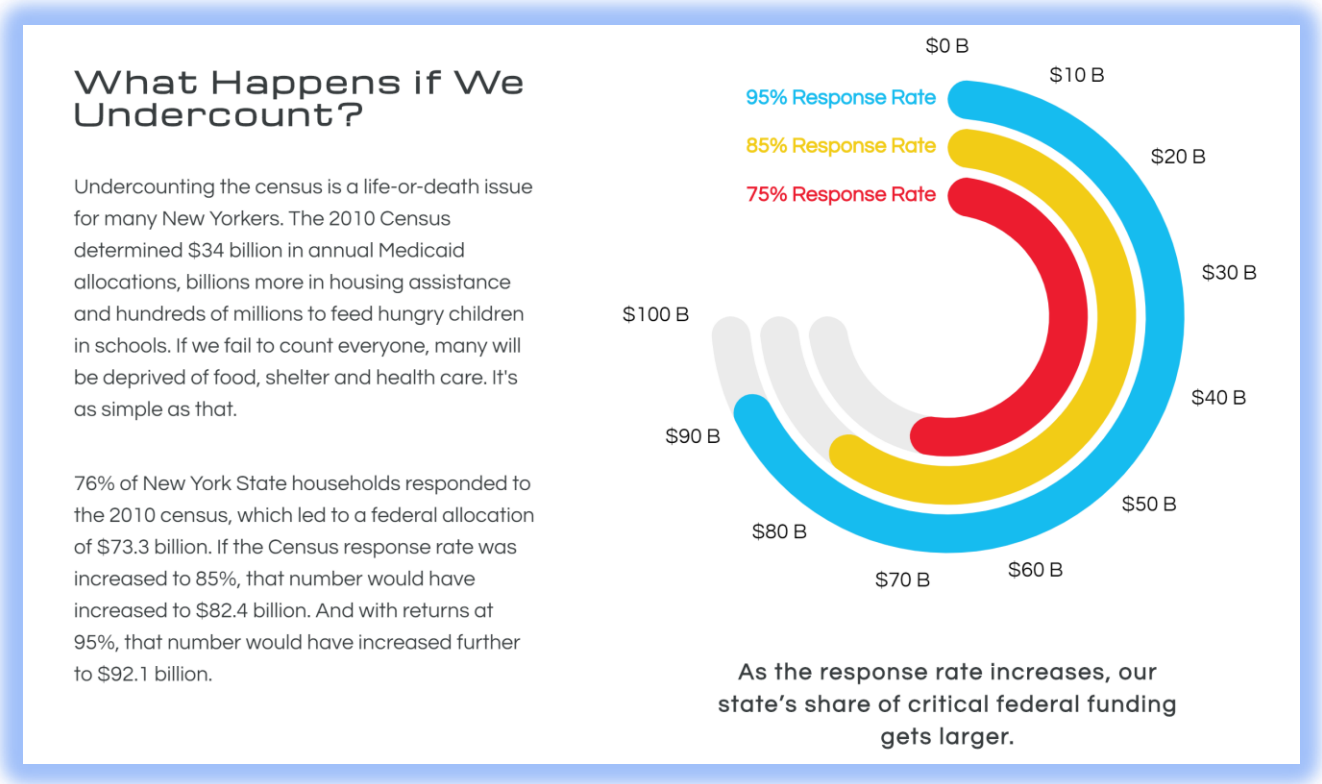
The US Constitution requires the Congress to count every person living in the United States every 10 years. This is a census year. The census is extremely important for public education because the data collected is used to distribute more than $700 billion in federal funds for programs such as: Medicaid and Title 1 funding, school lunches, and special education services for our students. In fact, projections show that the Rochester region could receive an additional $523 million in federal funding if the census return rate increases from 85% to 95%. Additionally, the results of the census will reshape local, state, and federal legislative districts. Many experts are projecting that New York State could possibly lose two congressional seats. Soon, the Census Bureau will be mailing residents reminders about the census.

The first day the census can be completed is March 12th. Please take the time to complete and send in this very important information. The importance of this census has led NYSUT to start a campaign called NYSUT Counts, to bring awareness and information to members about the census process. Additional information can be found at nysutcounts.org

Lastly, we are scheduled to begin negotiations on March 16, 2020. We will keep you informed as we move through the negotiating process.

In Solidarity,
John

Go to NYSUTCounts.org for more information about the importance of the 2020 Census



PAC Chair Message

I hope your new year is off to a good start. During the dark days of January and February, hibernation certainly seems like a viable option for many of us. Recently though, as the hours of light continue to expand the thoughts Spring enter the mind. In our school year, time seems to pick up speed after February break as we enter the final months of the school year.

Speaking of calendars and time, John and I recently met with Dan and Ty to discuss the 2020-2021 school year. Our contract states that the district and the STA meet to discuss the calendar for the upcoming school year. Our

contract grants us some flexibility with regards to number of work days for teachers. Article 10 Section B in our contract states that members can work up to 188 days with 183 student days. The "up to" language has provided us with some flexibility over the past few years. This current year members were scheduled to work 188 days with 183 student days (not counting snow days). The previous 2 years we were scheduled 187 days. For the 2020-2021 school year, we will work 186 days with 183 student days. This is due in part to the tight schedule with Labor Day falling on September 7. Unfortunately, it does not look like we will be able to utilize the accruing of 6 PD hours in lieu of a Spring Superintendents Day that we have used the last 2 years. This has been a great example of the district and the STA working together to meet the needs of both parties. he district was able to get more focused PD led by members, and the members were able to have more choice in their PD and flexibility with their Spring break.

Negotiations Update – The district and the STA have agreed to start negotiations on March 16. This session is where we lay the foundation for the upcoming negotiations including setting up future meeting dates and locations. On our team this year we have a few new members. Sue Chatterton and Rob Allen will be joining John, our NYSUT Labor Relations specialist Steve Monks, and myself on the team. As usual, I will be providing updates as we move through the process. If your home email address has changed, please contact Rob Allen. On behalf of the team, we appreciate the support we have received so far. It's comforting to know we have the backing of the roughly 400 members in our unit.

In Solidarity,
Joe

Contract 101

Joe DiTucci, PAC Chair

Article 44 Retirement Provisions and Article 45 Retirement Incentive

January 31st was the deadline for members to send in their retirement letters should they wish to retire at the end of the current school year. For those of you who have recently submitted your letters, I'd like to congratulate you on an incredible achievement. There are 2 articles in our contract which speak to possible monetary distributions for retirees.

Article 44 refers to the distribution that members will receive based on the number of sick days they have accrued over their career. Please refer to Article 44, Section F for the amounts paid based on the number of days.

Article 45 is entitled "Retirement Incentive" and refers to a $7,000 payout should you meet the eligibility requirements expressed in this article.

If either of these applies to you, I encourage you to set up a meeting with a district representative to explore your options with the distributions.

The STA is holding monthly Happy Hours at the Spencerport Fireman's Exempt Hall, 75 S Union Street. Please consider joining us at one or all of these social events!

Happy Hour Dates:
March 6
April 17
May 1
June 5

STA Calendar of Events

March 19th – Executive Council Meeting, Cosgrove, Room 626, 4:00 PM

March TBD – STA Euchre Tournament

April 16th – Executive Council Meeting, Cosgrove, Room 626, 4:00 PM

May 21st – Executive Council Meeting, Cosgrove, Room 626, 4:00 PM

June 4th – Fireman's Carnival Kiddie Parade/Book Give-Away

FACT SHEET

FACTS FOR PARENTS ON OPTING OUT OF STATE TESTS

Fact Sheet No: 20-06 ***(Updates 19-06)*** **February 2020**

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

The State Education Department (SED) no longer questions 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. 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 grades 3-8 ELA and mathematics state assessments are required by the Federal Elementary and Secondary Education Act (ESEA). In December 2015, ESEA was reauthorized as amended by the Every Student Succeeds Act (ESSA). ESSA continues the requirements for statewide standardized tests[1] and that 95 percent of all students and subgroups be assessed annually. The Federal role in state accountability systems has been reduced under ESSA. States are responsible for most of the decisions regarding the design and consequences of the accountability system, including treatment of opt-outs.

New provisions in ESSA requires districts to inform parents and guardians of opt-out policies and affirms a parent's right to have their children opt-out of statewide standardized tests, where state and local policies permit. However, SED has taken the position that since New York State law is silent on the right to opt-out; there is no obligation to inform parents.

- [ESEA III2 (e)(2)(A)] *"IN GENERAL.—At the beginning of each school year, a local educational agency that receives funds under this part shall notify the parents of each student attending any school receiving funds under this part that the parents may request, and the local educational agency will provide the parents on request (and in a timely manner), information regarding any State or local educational agency policy regarding student participation in any assessments mandated by section 1111(b)(2) and by the State or local educational agency, which shall include a policy, procedure, or parental right to opt the child out of such assessment, where applicable.*

[1] ESSA also requires statewide assessments in ELA and math once in high school and grade span testing in science.

NEW YORK STATE PLAN

ESSA requires the state utilize a methodology for calculating student achievement that includes all continuously enrolled students, regardless of whether or not they took the test. Schools must report aggregate participation rates for all accountability subgroups in all schools. ESSA also makes it clear: it is up to states to determine how participation rates will factor into the state accountability system. New York State's new accountability system was implemented in the 2018-19 school year. The new system changed how the state factors in opt-outs for identifying low-performing schools.

SED has chosen to calculate student achievement using two different methodologies, one that includes all enrolled students to meet the requirement of the law and a second calculation based only on those students that participate in the State assessments. These two measures will be combined to determine a school's composite performance rating for student achievement. The state will then combine the composite performance rating with a school-wide growth measure to initially identify schools for corrective action. SED has stated publically that they do not intend to identify schools for improvement if the schools have high academic achievement but low participation rates. **However, the more students that opt-out, the more likely the school will have a lower average academic achievement measure, resulting in a lower combined rating.**

POTENTIAL 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.**[2]

There are some potential consequences for schools:

- Districts with schools that persistently and substantially do not meet participation rates will be required to submit a corrective action plan that will escalate over time. Superintendents will be pressured to improve participation rates. There are some districts that have attempted to discourage opt-outs through the use of punitive measures, such as sit-and-stare policies or requiring students take alternative exams. NYSUT opposes sit-and-stare policies or requiring alternative exams.
- SED has stated that it does not support any withholding of state aid from schools or diversion of school improvement funds from those schools that need them most because of participation rates. However, the methodology used for calculating student achievement will most likely result in a lower performance level for schools with high opt-outs, which may lead some schools to be mislabeled as underperforming.
- Comprehensive Support and Improvement (CSI) schools, and for the lowest performing schools based on subgroup performance, Targeted Support and Improvement (TSI) schools may not be able to meet the exit criteria if the academic achievement measure remains in the lowest performance level, which is more likely with a high number of opt outs.
- The 95 percent participation rate will be a criterion for identifying whether a school can be designated as a "Recognition (high performing)" school. This would be consistent with past practice.

Although originally intended to evaluate programs, 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). Schools must use multiple measures in making such determinations. Actions by the state Legislature and Board of Regents have minimized how the assessments can be used. Parents should ask to review the district policies for how students that opt-out will be evaluated for both AIS and placement in advanced courses.

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

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[2] SED 2017-2018 SIRS Manual, see page 75 http://www.p12.nysed.gov/irs/sirs/home.html

FACT SHEET

OPT-OUT OF STATE TESTS

Fact Sheet No: 20-05 ***(Updates 19-05)*** **February 2020**

As the next round of state tests approach, it is important to review the facts around opting out of state tests, in particular, the grades 3-8 ELA and math state assessments. The state's accountability system has changed to comply with the requirements of the Federal Every Student Succeeds Act (ESSA). ESSA continued the 95 percent participation requirement but placed responsibility for how to address it in the hands of the states. New York State's new accountability system was implemented in the 2018-19 school year. The new system changed how the state factors in opt-outs for identifying low-performing schools. Some school districts have provided parents with inaccurate information on the consequences of opting out. This NYSUT fact sheet attempts to clear up any misinformation teachers may hear by reviewing the federal requirements for participation in the state assessments and potential consequences of opting-out for districts, students and teachers.

NYSUT fully supports parents' right to choose what is best for their children— including NYSUT members who decide as parents to opt their child out of state tests. 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 are a significant factor for identifying low-performing schools.

ADVICE FOR LOCAL LEADERS

We recognize that many members have strong feelings about this issue. As an organization, NYSUT has been clear that students should not be subjected to over-testing or burdened with field tests. NYSUT is on record as supporting districts that choose to opt-out of field tests. NYSUT has demanded the state take action to fix the serious issues with New York's grade 3-8 ELA and math tests. Additional action is recommended at the local level:

- NYSUT encourages members to exercise their rights as citizens and professionals to speak their mind about high-stakes tests in general and to consider refusing the tests for their own children. NYSUT will defend teachers against disciplinary action if a district pursues 3020-a/b charges. (See page 4, below)
- Districts with persistent high opt-out rates will be required to develop improvement plans. Encourage the district to work with stakeholders to develop appropriate policies for students who choose to opt-out. Students should not be subject to punitive, harmful "sit and stare" policies.
- To address the numerous testing concerns, NYSUT launched a Correct the Tests campaign calling on SED to correct the tests and stop the roll-out of computer-based testing.

FEDERAL ACCOUNTABILITY and the Grades 3 – 8 STATE ASSESSMENTS

The grades 3-8 English Language Arts (ELA) and mathematics state assessments are required by the Federal Elementary and Secondary Education Act (ESEA) and were originally intended to evaluate school and district programs. Each state was required to establish annual measurable objectives (AMOs) for determining adequate yearly progress (AYP) to ensure that all students meet or exceed the state's proficient level of academic achievement on the State's assessments. The intent of ESEA when the 95 percent participation rate was first introduced was to ensure that districts did not discourage lower-performing students from taking the tests.

In December 2015, ESEA was reauthorized as amended by the Every Student Succeeds Act (ESSA).[1] Under ESSA, the Federal role in state accountability systems was severely limited. States are responsible for most of the decisions regarding the design and consequences of the accountability system. Key provisions related to test administration include:

- Maintains program for administration of statewide standardized tests (these include ELA and math in grades 3-8 and once in high school; and, grade span testing for science).
- States must set goals for ELA and math (aligned to college-career readiness) and English Language proficiency.
- Maintains the requirement that 95 percent of all students and subgroups be assessed annually.
- States must provide a clear and understandable explanation of how the State will factor the participation rate requirement into the accountability system, including any consequences for not meeting the 95 percent participation rate.
- Requires school districts to inform parents and guardians of opt-out policies, and affirms a parent's right to have their children opt-out of statewide standardized tests where state and local policies permit. SED has taken the position that since New York State law does not specifically address the right to opt-out, there is no obligation to pro-actively inform parents.
- Requires states to identify the lowest performing five percent of schools, with state tests weighted more heavily than other factors.

NEW YORK STATE ACCOUNTABILITY PLAN

ESSA establishes a methodology for calculating student achievement that requires including all "continuously enrolled" students, regardless of whether or not they took the test. Districts must report participation rate data for all accountability subgroups in all schools. The language of the law is also clear: states must determine what actions they wish to take as part of their state accountability system in those schools that have student participation rates of less than 95 percent. New York State has chosen to calculate student achievement using two different methodologies:

- Academic Achievement Index - The State will use Performance Indices based on measures of proficiency on state assessments using the prescribed methodology that includes all enrolled students.
- Core Subject Performance Index – This calculation is based only on those students that participate in the state assessments.
- These measures will be combined to determine a school's composite performance rating for student achievement. The core subject calculation is intended to mitigate the chance that a school will be identified based on opt-outs rather than low achievement. However, the more students that opt-out, the more likely the school will have a lower average academic achievement measure, resulting in a lower combined rating.
- The state will then combine a school-wide growth measure with the composite performance rating to initially identify schools for corrective action.

SED has stated publically that they do not intend to identify schools for improvement if the schools have high academic achievement but low participation rates. However, **the methodology used by the state for identifying low performing schools will penalize schools with high opt-outs**. SED has indicated that schools with above average student performance (before accounting for opt outs) will not be designated among the lowest performing group, they are above the initial cut-point. However, school buildings with performance levels below the state average (but well above the lowest five percent required by ESSA) are at risk. These schools could be identified as low performing schools if the school also performed poorly on the state growth model and other factors. If a school's indicator ratings are mixed (some high, others low) decision rules are used to determine whether the school's overall performance requires intervention. NYSUT will continue to advocate for all of these provisions to be modified or eliminated so that no school is penalized as a result of parents exercising their right to opt-out their children of state assessments.

[1] See link to the full text of the statute and language for the provisions cited in the additional resources section

POTENTIAL CONSEQUENCES OF OPTING-OUT FOR DISTRICTS

SED has stated that it does not support any withholding of state aid from schools or diversion of school improvement funds from those schools that need them most because of participation rates. However, Superintendents will be pressured to improve participation rates to avoid an opt-out penalty and potential for being misidentified as a district with low-performing school(s).

Districts will be required to report participation rates for all subgroups in all schools in the district report card, along with other accountability measures. Districts with schools that persistently and substantially do not meet participation rates will be required to submit a corrective action plan that will escalate over time.

- SED will require improvement plans for the lowest performing schools in the state, Comprehensive Support and Improvement (CSI) schools, and for the lowest performing schools based on subgroup performance, Targeted Support and Improvement (TSI) schools.
- CSI and TSI schools may not be able to meet the exit criteria if the academic achievement measure remains in the lowest performance level, which is more likely with a high number of opt outs.
- To exit receivership, schools are required to meet improvement targets on ESSA indicators and other measures that include participation rates.
- The 95 percent participation rate will be a criterion in determining whether a school can be designated as a "Recognition (high performing)" school.

PARTICIPATION RATE IMPROVEMENT PLANS

- Improvement plans are required for schools that have an academic achievement rating that is Level 1 (lowest 10 percent); fail to meet the 95 percent participation requirement for two consecutive years; and, fails to improve participation rates. The plan must be developed in collaboration with a committee composed of the principal and staff selected by the representative of the collective bargaining organization(s), and parents (not employed by the district or a collective bargaining organization.) Schools will be required to submit their self-assessment and improvement plan to SED for approval.
- Schools that implement a school improvement plan and do not improve their participation rate the following year must conduct a district participation rate audit and update their plan.
- Districts with schools that do not improve their participation rate by the third year must contract with a BOCES to conduct an audit and develop an updated plan. The updated plan must be developed in collaboration with a committee composed of BOCES staff, the superintendent, the school principal or designee, school staff including teachers and support staff, and parents. At this point, only fifty percent of the school staff can be selected by the representative collective bargaining organization(s).
- Districts that have schools that implement the BOCES improvement plan and fail to improve the following year, will undergo an audit by SED and may be required by the Commissioner to undertake activities to raise student participation. These activities are not specified in the Commissioner's Regulations.
- Schools that do demonstrate improvement will be required to update the plan but will not need to conduct an audit or new self-assessment.

POTENTIAL CONSEQUENCES FOR STUDENTS

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.**[2]

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.

[2] SED -2019-2020 SIRS Manual, http://www.p12.nysed.gov/irs/sirs/

- 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.[3]
    - 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 for remediation was reduced by action of the Regents. Historically, students who performed below Level 3 (proficiency) would receive Academic Intervention Services (AIS). With the initial roll-out of the Common Core Learning Standards (CCLS), SED anticipated student scores would drop and chose to provide flexibility to school districts to determine what services, if any, would be provided to students. SED has been extending the regulatory language on AIS eligibility criteria on an almost annual basis. The latest amendment was in June 2017.[4] The item notes that SED recommends delaying the establishment of the standard setting panel until the 2019-20 school year to ensure appropriate alignment with the Next Generation English Language Arts and Mathematics Learning Standards and corresponding assessments. Later guidance provided by SED explains that this panel will be convened following the spring 2021 administration of the Grades 3-8 tests.

NYSUT recommends that SED provide guidance on what districts should do when parents inform the school they do not want their child to participate in state tests in order to ensure that districts do not implement policies that are punitive and harmful to students. Districts have been informed that schools do not have any obligation to provide an alternative location or activities for individual students while the tests are being administered. This has created a dilemma for districts, which have responded in varied ways.[5] Some will allow students to read, others provide an alternative activity. **Unfortunately, some have implemented policies that are punitive and harmful to students, such as substituting an assessment that has no value, "sit and stare" and excluding students from school celebrations. NYSUT is on record in opposing these policies.**

POTENTIAL CONSEQUENCES FOR TEACHERS

Locals and individual union members who advise parents or students to opt-out of state tests may face risks.

- A teacher who, in conversations with students or parents, takes a position on testing contrary to the school district's educational program may potentially be subject to disciplinary action, e.g. charges of misconduct or insubordination. The Supreme Court has held that **when a public employee speaks in his/her capacity as an employee, the speech is not constitutionally protected**.
- However, because standardized testing is a matter of public concern, a local speaking as a union, or an individual member speaking as a parent or citizen, about educational concerns over standardized testing, for instance, in a letter to the editor or in a statement to the Board of Education, is protected by the U.S. Constitution at least so long as they are not encouraging other parents or students to opt-out from a test.
- Members' questions about particular statements or actions regarding opting-out should be referred to the LRS.

[3] 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]

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

[5] SED has created an assessment tool kit at http://www.nysed.gov/assessments-toolkit

Additional Resources

- NYSUT Correct the Test Website: https://correctthetests.com/
- NYSUT ESSA Overview Fact Sheet SED ESSA Webpage http://www.p12.nysed.gov/accountability/essa.html
- Full Text of the Federal Law - https://www2.ed.gov/policy/elsec/leg/esea02/index.html
  Federal Citations in this document:
  [ESEA section IIII(c)(4)(E)] stipulates that each state must -
  "Provide a clear and understandable explanation of how the State will factor the requirement of clause (i) of this subparagraph [the 95% participation rate requirement] into the statewide accountability system."

  [ESEA III2 (e)(2)(A)] *"(A) IN GENERAL.—At the beginning of each school year, a local educational agency that receives funds under this part shall notify the parents of each student attending any school receiving funds under this part that the parents may request, and the local educational agency will provide the parents on request (and in a timely manner), information regarding any State or local educational agency policy regarding student participation in any assessments mandated by section 1111(b)(2) and by the State or local educational agency, which shall include a policy, procedure, or parental right to opt the child out of such assessment, where applicable."*

  [Section 1111 (e)(1)(B)(iii)(XI)] of ESSA expressly prohibits the Secretary of Education from prescribing -
  "the way in which the State factors the requirements under subsection (c)(4)(E)(i) [the 95% participation rate requirement] into the statewide accountability system under this section."

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Missing member celebrations?

Personal news from members will be shared in each December issue. Any news you would like to share with your colleagues from Fall 2019 or all of 2020 can be emailed to Emmy Thevanesan at any time.

Don't forget to include pictures! This news will be part of the December 2020 issue.

STA Leadership, 2019-2020

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**Denotes this position has a vote on Executive Council*
^Denotes position is an Executive Council appointment

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