

Managing State Assessment Opt Outs
Guidance from the New York State School Board's Association
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School districts across the state are facing increasing assertions by parents that they plan on opting their children out of the State's grades 3-8 assessments as NYSUT's President Karen Magee has called for all parents to opt their children out of such tests.

The New York State School Boards Association is receiving numerous calls regarding the choices school districts have in managing this situation. Although there are no definitive answers to all of the questions, there are some things that we do know.

- ❖ First, federal law requires that states assess students in grades 3-8 on an annual basis in specified areas. It also requires that 95 percent of students in each school participate in such assessments. According to the U.S. Department of Education, failure to comply with these requirements can subject states and school districts to sanctions including, but not limited to, the loss of Title I monies and funding available under other federal programs such as the Individuals with Disabilities Education Act (IDEA).
- ❖ Second, the State Education Department considers such testing to be part of the core academic program that school districts must offer all students attending their schools.
- ❖ Third, school district officials are bound by an oath of office that requires them to comply with legal requirements that affect the operation of school districts, including the administration of state assessments. Therefore, school district officials have no authority to encourage or promote parental opt out efforts.
- ❖ Fourth, the State Education Department has taken the position that school boards refusing to administer state assessments are subject to removal from office, and administrators taking a similar course of action are subject to proceedings leading to the loss of certification.
- ❖ Fifth, the State Education Department has stated that there is no provision in statute or regulation allowing parents to opt their children out of State tests.

Unfortunately, the reality that many districts may face this year is that despite warnings and potentially severe consequences, some parents will remain steadfast in their decision to have their children opt out of the state assessments. This leaves districts in the untenable position of figuring out how to appropriately respond on test administration days.