



NYS Allies for Public Education  
Nysape.org

January 5, 2016

Ms. Ann Whalen, Senior Advisor  
U.S. Department of Education  
400 Maryland Avenue, SW  
Washington, DC 20201

Dear Ms. Whalen & US Department of Education,

**Please allow us, the parents, to respond to your latest threats towards our school districts, school officials, educators, and children. Every school district and school official in NY offered the State assessments to EVERY single student. Our districts are in FULL compliance of the law. It is we, the parents, who have refused to comply with your regulation. Since this letter is regarding our (parent) actions to protect our children, we felt that this letter should instead be addressed and responded to by we, the parents of New York State.**

Before the spring 2016 test administration, I would like to take this opportunity to remind you of key assessment requirements that exist under the Elementary and Secondary Education Act of 1965, as amended by the No Child Left Behind Act of 2001 (ESEA). These requirements will remain in place for the 2015–2016 school year, and similar requirements are included in the recently signed reauthorization of the ESEA, known as the Every Student Succeeds Act (ESSA).

A high-quality, annual statewide assessment system that includes all students is essential to provide local leaders, educators, and parents with the information they need to identify the resources and supports that are necessary to help every student succeed in school and in a career.

**This was never designed as a system of support, but rather a system of punishment. This has become the fatal flaw of education reforms.**

Such a system also highlights the need for continued work toward equity and closing achievement gaps among subgroups of historically underserved students by holding all students to the same high expectations.

Section 1111(b)(3)1 of the ESEA requires each State educational agency (SEA) that receives funds under Title I, Part A of the ESEA to implement in each local educational agency (LEA) in the State a set of high-quality academic assessments that includes, at a minimum, assessments in mathematics and reading/language arts administered in each of grades 3 through 8 and not less than once during grades 10 through 12; and in science not less than once during grades 3 through 5, grades 6 through 9, and grades 10 through 12. Furthermore, ESEA sections 1111(b)(3)(C)(i) and (ix)(I) require State assessments to “be

the same academic assessments used to measure the achievement of all children” and “provide for the participation in such assessments of all students” (emphasis added). These requirements do not allow students to be excluded from statewide assessments. Rather, they set out the legal rule that all students in the tested grades must be assessed.

**School districts must provide and administer the assessments. They have absolutely met that requirement. No law can force a child to take the assessments or to pick up a pencil. For every regulation or rule implemented to force compliance, parents have found loopholes, workarounds, and ways to keep their children away from these assessments, and will continue to do so for the sake of our children. No rule, law, financial bribe, or threat would be worth sacrificing our children's well-being.**

In applying for funds under Title I, Part A of the ESEA, your State assured that it would administer the Title I, Part A program in accordance with all applicable statutes and regulations (see ESEA section 9304(a)(1)). Similarly, each LEA that receives Title I, Part A funds in your State assured that it would administer its Title I, Part A program in accordance with all applicable statutes and regulations (see ESEA section 9306(a)(1)). Please note that the portions of the ESEA referenced above have not been waived for States, including States that received ESEA flexibility.

**One only has to go back to the start of the 95% participation rule tied to Title 1 funding to understand its intentions. It was meant to prevent school districts from purposely leaving low performing children or groups of children out of the testing pool in an attempt to "cheat" the system and boost scores. It would be very interesting to witness a court case of the USDOE trying to argue that this is what districts were doing when 240,000 parents did not allow their children to participate.**

Over the last several months, many States have released 2014–2015 State assessment data. A few States (**had parents that instructed their children not to take the assessments**) did not assess at least 95 percent of students in the “all students” group or individual ESEA subgroup(s) statewide. Additionally, in some states, LEAs within some States did not assess at least 95 percent of their students. ED has asked each of these States to submit information on the steps it is taking to immediately address this problem and meet its assessment obligations under the ESEA. Each SEA was provided 30 days to submit its response to the Office of State Support (OSS), and ED is currently reviewing information submitted by these SEAs. As additional States release assessment results, ED will request such information if the State or its LEAs do not assess at least 95 percent of their students. If a State’s response does not adequately address this problem and meet the State’s assessment obligations under the ESEA, ED may take enforcement action.

**Don't be surprised if these attempts at coercing states and districts to disregard parental rights leads to increasing our resolve and boosting our opt-out numbers. The ED threat of "enforcement action" will only serve to double our efforts to protect our parental rights and our children.**

In each request for information, the SEA was asked to demonstrate that it has taken or will take appropriate actions to enforce the requirements of the ESEA, describe how such actions will specifically address the problem that occurred in 2014–2015, and ensure that all students will participate in statewide assessments during the 2015–2016 school year and each year thereafter, recognizing that the extent of the non-participation and other relevant factors should inform the SEA’s actions.

**The fact that you are describing the country-wide history making actions of parents rising up to protect their children, their public schools, and their communities as "the problem", shows a**

**gross lack of understanding on your part. Your new boss, Mr. King, has a very intimate knowledge as to the resolve and tenacity of the parents of NY. (As a matter of fact we, along with numerous other educational organizations in NY, called for his resignation and got just that. The fact that he "failed up" is a discussion for another letter) He may be able to provide you with the insight you lack.**

Some examples of actions an SEA could take, alone or in combination, include:

- Lowering an LEA's or school's rating in the State's accountability system or amending the system to flag an LEA or school with a low participation rate.

**Amending the accountability system would require legislative action or action by the Regents. If they agreed to commit political suicide they would need to flag over 90% of the districts in NYS, essentially making this "flag" useless. These "flags" would become a status symbol. Those without one will be singled out as a test-based facility.**

- Counting non-participants as non-proficient in accountability determinations.

**This would be of no consequence to students. Our legislature has already insured that these scores mean nothing for our children. By NYS law, these scores cannot be used as ANY sole determining factor in ANY placement decisions. Our teachers cannot be rated on these scores for four years as well. We have essentially made state assessments completely irrelevant in NYS. As for school districts, counting 20%+ of students as non-proficient would further make the data from state assessments useless to interpret or use for any relevant purposes. In addition, this action would essentially make the data from students TAKING the assessments equally invalid. This option would boost our argument that these assessments are of no use, even for data purposes.**

- Requiring an LEA or school to develop an improvement plan, or take corrective actions to ensure that all students participate in the statewide assessments in the future, and providing the SEA's process to review and monitor such plans.

**Parents do not ask for permission to refuse their children to participate in harmful state assessments. Schools that fight against parents asserting their rights have equally high opt out numbers as schools who honor that right. What exactly would this improvement plan look like? Contracts with PR firms to market the common core assessment product? Perhaps meetings to convince parents that 10 hour long tests are good for their children while serving free dinner and drinks? Paid appearances from pro-reform celebrities? Marketing campaigns will not convince parents to participate. Every educator, school official, legislator, Regent, and even those in your office have called out these assessments for what they are: garbage. Fixing the ENTIRE problem is the only option to convince parents to opt back into this system.**

- Requiring an LEA or school to implement additional interventions aligned with the reason for low student participation, even if the State's accountability system does not officially designate schools for such interventions.

**For every "intervention" we will implement 5 more to assure parents are not misinformed by such marketing strategies. These strategies are futile and a waste of taxpayer money. However, this again is irrelevant to parents opting their children out of assessments.**

- Designating an LEA or school as "high risk," or a comparable status under the State's laws and regulations, with a clear explanation for the implications of such a designation.

**A "high risk" of what exactly? "High risk" of a thoughtful, child centered education? "High risk" of community members thinking they are in control of their local districts? "High risk" of students being considered and considering themselves more than a number? Again, since over 90% of our districts in NYS would be flagged and given a "high risk" status, it essentially negates this as a consequence. As stated before, often high percentages of student refusals have become a status symbol and an indication of a community that puts children before all else.**

- **Withholding or directing use of State aid and/or funding flexibility.**

**There is no current law or regulation allowing the State to withhold funds from a district based on participation rates. NY is currently under a waiver from NCLB participation consequences. This waiver is fully in effect until August 2016 when NCLB is replaced. This year there are no regulations or laws which would allow funding to be withheld from public school districts even in the case of another significant year of non-participation in state assessments. You simply do not have the authority or more importantly the support to change funding formulas for districts. Your friend and colleague, NYSED's Commissioner Elia, who upon being fired from her previous position "failed up" as well, does not have that authority either. Although the Commissioner may want to strip funding from all of the districts that honor parental rights and speak out against your shared reform policies, thankfully our school funding formulas are not based on revenge or who the commissioner does/does not personally like.**

In addition, an SEA has a range of other enforcement actions at its disposal with respect to noncompliance by an LEA, including placing a condition on an LEA's Title I, Part A grant or withholding an LEA's Title I, Part A funds (see, e.g., section 440 of the General Education Provisions Act).

**Less than 2% of the entire NY public school budget comes from the Federal Government in the form of title 1 money, with most district budgets comprising less than 1% of their funds from title 1 money. The basic principles of Title 1 state that schools with large concentrations of low-income students will receive supplemental funds to assist in meeting students' educational goals. Only districts with more than 40% impoverished students can use title 1 funds for schoolwide programs. Districts with less than 40% can only use these funds for specifically targeted students. Essentially, the Department of Education is laying the blame squarely at the feet of our most vulnerable student population.**

**Description of students benefiting from title 1 funds that the Federal Government is targeting with threats:**

- **migrant students**
- **students with limited English proficiency**
- **homeless students**
- **students with disabilities**
- **neglected students**
- **delinquent students**
- **at-risk students**
- **any student in need.**

**Title 1 money must be spent on services for children in poverty such as:**

- Transportation to and from homeless shelters if a student is displaced, and transportation to after school programs, and summer school programs**
- breakfast programs**
- after school programs**
- teacher aides**
- technology for high need students**
- babysitting costs/childcare for parent involvement activities**
- travel expenses for parent involvement activities**
- specialized assessments**

If a State with participation rates below 95% in the 2014–2015 school year fails to assess at least 95% of its students on the statewide assessment in the 2015–2016 school year, ED will take one or more of the following actions:

(1) withhold Title I, Part A State administrative funds;

**The fact that these students with the highest needs are being placed in the crossfire of threats from the Federal Government is discriminatory and bullying at best. Picking on our most vulnerable children is a sign of a system in a complete state of dysfunction.**

(2) place the State's Title I, Part A grant on high-risk status and direct the State to use a portion of its Title I State administrative funds to address low participation rates; or

**Parents know exactly what these state assessments are and are not. They are not misinformed, uninformed, or confused. We know exactly what is at stake and what veiled empty threats are. We have already fully researched what you can and cannot do to punish our children and their schools, and simply feel that your "could" and "possible" threats are as empty as the promise of school reform. We choose truth and our children EVERY TIME.**

(3) withhold or redirect Title VI State assessment funds.

For all States, ED will consider the appropriate action to take for any State that does not assess at least 95 percent of its students in the 2015–2016 school year — overall and for each subgroup of students and among its LEAs. To determine what action is most appropriate, ED will consider SEA and LEA participation rate data for the 2015–2016 school year, as well as action the SEA has taken with respect to any LEA noncompliance with the assessment requirements of the ESEA.

**Consider this: we will not comply.**

**WE will consider appropriate action against any state or federal official that attempts to:**

- coerce parents and students into compliance through lies and misinformation**
- use threats against our most vulnerable children to force participation**
- claim you have jurisdiction over funds that you simply do not have control over**
- mistake our actions as unintentional**

We look forward to working with you to ensure that all students participate in statewide assessments during the 2015–2016 school year and each year thereafter, and in supporting implementation of the Every Student Succeeds Act, which includes a new focus on auditing and reducing unnecessary State and local assessments and providing parents and families with better information about required testing.

**We look forward to educating you on what our parental rights are. Through your acceptance of these rights, we can return to a full and enriching partnership in the education of all children.**

Additionally, States may find other useful information regarding assessments in the Administration's Testing Action Plan, released in October 2015. As the Plan describes in greater detail, all tests should be worth taking, offer students an opportunity to learn while they take them, and allow them to apply real-world skills to meaningful problems.

Tests must accommodate the needs of all students and measure student success in a fair, valid, and reliable way. In the coming months, ED will release additional resources and guidance to support your efforts to eliminate duplicative local or State assessments and continue to develop new and innovative approaches to using assessments effectively to support and inform classroom instruction.

**We will assume that while our state assessments offer none of the above criteria, you are in agreement with our current plan of action.**

Please do not hesitate to contact your State's program officer in the Office of State Support if you need additional information or clarification. Thank you for your continued commitment to enhancing education for all of your State's students.

**You're very welcome. The parents of NY and the rest of the country that have played an active role of resistance for the purpose of improving education in our country accept your gratitude. Please don't hesitate to contact us if you are confused by our determination or disregard to threats that were intended to cause panic and compliance. We will be happy to clarify.**

Sincerely,

Jeanette Deutermann, Founder  
*Long Island Opt Out*  
*NYS Allies for Public Education*

Cc:  
MaryEllen Elia, NYS Education Commissioner  
NYS Board of Regents  
Governor Andrew Cuomo  
Jere Hochman, NYS Secretary of Education  
NYS Legislature