

# MAINE STATE LEGISLATURE

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**Date:** January 15, 2020

**Source of Report:** Letter from the Education and Cultural Affairs Committee regarding LD 185 to advise districts to publish information regarding a parent’s right to opt out of standardized testing and the process in doing so on district public websites.

**Topic:** LD 185 An Act to Provide a Method for a Student to be Excused from Standardized Testing.

### Context

Section 1111(b)(2)(B) of the Elementary and Secondary Education Act (ESEA) as amended by the Every Student Succeeds Act (ESSA) of 2015 requires the same assessment be used to measure the achievement of all public elementary and secondary school students in the state.

- ~ (B) REQUIREMENTS.—The assessments under subparagraph (A) shall—
  - (i) except as provided in subparagraph (D), be—
    - (I) the same academic assessments used to measure the achievement of all public elementary school and secondary school students in the State; and
    - (II) administered to all public elementary school and secondary school students in the State;

Not meeting this federal requirement will have a fiscal impact. Section 1111(c)(4)(E) of ESSA indicates:

- (E) ANNUAL MEASUREMENT OF ACHIEVEMENT.—
  - (i) Annually measure the achievement of not less than 95 percent of all students, and 95 percent of all students in each subgroup of students, who are enrolled in public schools on the assessments described under subsection (b)(2)(v)(I).
  - (ii) For the purpose of measuring, calculating, and reporting on the indicator described in subparagraph (B)(i), include in the denominator the greater of—
    - (I) 95 percent of all such students, or 95 percent of all such students in the subgroup, as the case may be; or
    - (II) the number of students participating in the assessments.
  - (iii) Provide a clear and understandable explanation of how the State will factor the requirement of clause (i) of this subparagraph into the statewide accountability system.

Section 1112 (e)(2)(A) of ESSA indicates:

grade level and subject area in which the teacher has been assigned.

(2) TESTING TRANSPARENCY.—

(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.

Federal statute requires that parents receive a notification indicating their right to request the districts policies and procedures regarding student participation in state and local assessments. When this information is requested, the district will provide all applicable information to families. The district should be prepared to provide families with their assessment related policies and procedures, this would include an opt-out procedure (if applicable). If the district does not have any policies or procedures regarding student participation in local and state assessments, the notification must still be issued and could then indicate that no written policies or procedures exist.

Maine currently receives approximately \$53 million dollars in Title I funds on an annual basis. Test participation rate requirements are under the direct purview of Title I. If participation rates fall below 95% there are negative fiscal and programmatic implications for Maine schools.

The reduction of Title I funds to the state has a direct impact on district Title I allocations and available funds to support schools identified for additional support. Maine is required to set aside 7% of Title I funds for such supports, may utilize up to 1% of funds for Title I administration with the remaining funds being allocated to Maine school districts for supplemental Title I activities.

The exact fiscal impact is unknown, as this would be determined by the U.S. Department of Education (ED).

Assessment participation, as a result of the implementation of ESSA, is also included in Maine's Model of School Support (federal accountability model). ESSA requires that the assessment participation rate must be utilized as the denominator for the academic achievement indicator. ESSA requires the denominator for academic achievement be the greater of:

- a) ***95% of all students enrolled in the grades assessed;*** or
- b) ***The number of students enrolled in the school who participated in the assessments.***

A lower participation rate below 95% will negatively impact a school's state assessment academic performance within Maine's Model of School Support. As a result, the accountability calculations for student achievement will appear measurably lower for schools that do not meet the required 95% participation rate for all students' groups with 10 or more students.

## Actions

The Department has provided guidance and technical assistance for district leaders.

- This guidance includes:
  - The Department does not prevent or promote non-participation of students
  - Some districts/schools have added participation in the state assessment as a graduation requirement.
  - Other districts/schools require parents to meet with the principal to discuss non-participation with a formal letter required.

## Findings

Several states do provide guidance regarding the function and purpose of a state summative assessment and the consequences of non-participation.

### Other state policies:

*Illinois* - no opt out provision

<https://www.isbe.net/Documents/FAQ95ParticipationStateAssessments.pdf>

*Oregon* – supports opt out provision [https://www.oregon.gov/ode/educator-resources/assessment/Documents/Opt-Out\\_Form\\_2018-19.pdf](https://www.oregon.gov/ode/educator-resources/assessment/Documents/Opt-Out_Form_2018-19.pdf)

*Ohio* – does not permit under law but provides guidance  
<https://education.ohio.gov/getattachment/Topics/Testing/Sections/Resources/Student-participation.pdf.aspx>

*New York* – does not promote opt out but provides guidance  
<http://www.p12.nysed.gov/assessment/ei/2018/2018-additional-information-assessments-essa.pdf>

News articles:

<https://www.washingtonpost.com/news/answer-sheet/wp/2016/01/28/u-s-education-department-threatens-to-sanction-states-over-test-opt-outs/>

<https://edsource.org/2017/california-proposes-minimal-sanctions-for-low-participation-in-state-tests/585098>

## Recommendations

It is my recommendation that parents, and families receive annual notification regarding local policies related to participation in local and state assessments, as outlined in federal statute. It is imperative that Maine school districts are given the autonomy to make the decision regarding non-participation policies and procedures at the local level.

## References

Elementary and Secondary Education Act, as amended by the Every Student Succeeds Act of 2015.

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STATE OF MAINE  
ONE HUNDRED AND TWENTY-NINTH LEGISLATURE  
COMMITTEE ON EDUCATION AND CULTURAL AFFAIRS

A. Pender Makin  
Commissioner of Education  
Maine Department of Education  
23 State House Station  
Augusta, ME 04333-0023

June 3, 2019

Dear Commissioner Makin:

On behalf of the majority of the members of the Joint Standing Committee on Education and Cultural Affairs, we are writing to you in regards to LD 185, An Act to Provide a Method for a Student to be Excused from Standardized Testing.

During the public hearing and work session, the committee heard that while some schools inform parents about their right to opt out of standardized testing, many schools do not. Although the majority of the committee did not believe that legislation was necessary to address this concern, the majority of the committee does believe that the issue needs to be addressed.

Accordingly, the majority of the committee respectfully request that the department advise districts to publish information about parents' right to opt out of standardized testing and the process for doing so on the districts' publicly accessible websites, and report back to the committee in January 2020 with an update on school districts that have included that information on their websites.

In addition, the majority of the committee respectfully requests that the department convene a workgroup of stakeholders in regards to the Maine Educational Assessment and report back to the committee in January of 2020 with the results of those conversations.

Thank you for your time and consideration on this matter, and please do not hesitate to contact us if you have any questions or concerns.

Sincerely,

Sen. Rebecca J. Millett  
Senate Chair

Rep. Victoria P. Kornfield  
House Chair

Cc: Members, Joint Standing Committee on Education and Cultural Affairs  
Dr. Karen Kusiak, Legislative Director, Department of Education