

# STATE OF NEW YORK

7744

2019-2020 Regular Sessions

## IN ASSEMBLY

May 17, 2019

Introduced by M. of A. EPSTEIN -- read once and referred to the Committee on Education

AN ACT to amend the education law, in relation to enacting the "right to opt out of high-stakes testing act"

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Short title. This act shall be known and may be cited as  
2 the "right to opt out of high-stakes testing act".

3 § 2. Section 305 of the education law is amended by adding a new  
4 subdivision 51-b to read as follows:

5 51-b. a. The commissioner shall ensure that school districts notify  
6 parents of students in grades three through eight, either by email  
7 and/or a mailed letter, that such students may refuse to participate in  
8 all state testing or any other high-stakes testing. Such notification  
9 shall be given no sooner than thirty school days and no later than seven  
10 school days prior to the scheduled administration of such testing. Such  
11 notification shall read as follows:

12 "It is the right of every parent to direct the upbringing and educa-  
13 tion of their children. Parents may refuse to permit their children to  
14 take state testing or any other high-stakes testing. Parents who refuse  
15 to permit their children to take such tests may send a letter containing  
16 the full name of the student, the name of the test or a description of  
17 the test so it may be properly identified, and the signature of the  
18 student's parent or legal guardian. No punitive measures may be taken  
19 against students who refuse to participate in such testing, nor shall  
20 students who do participate in such testing receive any incentive or  
21 reward for doing so."

22 The text of such notification shall be posted on school district  
23 websites in the most common spoken languages in the state.

24 b. Students who do not participate in any state testing or any other  
25 high-stakes testing shall be scored as a "refusal", rather than as

EXPLANATION--Matter in italics (underscored) is new; matter in brackets  
[-] is old law to be omitted.

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1 "absent", in accordance with the student information repository system.  
2 Students who do not participate in any state testing or any other high-  
3 stakes testing shall continue to receive a free and appropriate public  
4 education in their regular classroom environment during the adminis-  
5 tration of all makeup test periods.

6 c. Notwithstanding any other law, rule or regulation to the contrary,  
7 it shall be unlawful for any school district to require a student to  
8 participate in any state testing or any other high-stakes testing. It  
9 shall further be unlawful for any school district to take punitive meas-  
10 ures against students who refuse to participate in such testing, or  
11 provide any form of incentive or reward for students who do so partic-  
12 ipate. Punitive measures include, but are not limited to, threats of  
13 repeating a school grade, mandating after school attendance, mandating  
14 summer school attendance or any negative academic impact as a result of  
15 a student's refusal to participate in any state testing or any other  
16 high-stakes testing. School districts shall provide students whose  
17 parents refuse to permit their testing participation with an alternate  
18 educational activity during scheduled state testing times. Parents shall  
19 be informed of such alternative educational activity upon request. It  
20 shall be unlawful for school districts to require such students to be  
21 placed in a testing room or environment during scheduled state testing  
22 times, high-stakes testing times or makeup times. It shall further be  
23 unlawful for a school district to require a meeting with a student's  
24 parents as a prerequisite for refusal to participate in testing or  
25 provide an alternate educational activity during scheduled state testing  
26 or high-stakes testing times.

27 d. Notwithstanding the provisions of subdivision two of section three  
28 hundred six of this article, state aid for schools shall not be contin-  
29 gent on or in any way affected by the student participation rate for any  
30 state testing or any other high-stakes testing. Notwithstanding any  
31 other law, rule or regulation to the contrary, score results on any  
32 state testing or any other high-stakes testing shall not constitute  
33 grounds or be considered as a factor for determining whether a school is  
34 a chronically low-performing, underperforming or failing school. Nor  
35 shall a school district give any consideration to classroom partic-  
36 ipation rates in such testing when evaluating teacher performance or  
37 making personnel decisions. It shall likewise be unlawful for a school  
38 district to re-allocate funding among or between schools within such  
39 district based on student participation rates for such testing.

40 e. School districts shall not solicit or encourage any written  
41 exemption request on behalf of any student or group of students.

42 f. Notwithstanding any other law, rule or regulation to the contrary,  
43 a parent's or legal guardian's written request to school district offi-  
44 cial to excuse their child from any or all state testing or any high-  
45 stakes testing pursuant to this subdivision shall be granted.

46 g. As used in this subdivision, the term "high-stakes testing" shall  
47 mean testing where the results of such tests are used by the commission-  
48 er, the board of education or school district to:

- 49 (1) determine a student's admission to a public school or program;  
50 (2) evaluate the performance of a teacher or school administrator; or  
51 (3) categorize a school as high-performing, performing, low-perform-  
52 ing, underperforming, needing improvement or failing.

53 § 3. This act shall take effect immediately.