

Date: September 22, 2014

To: District Superintendents
Charter School Directors

From: Judy Park, Associate Superintendent, Student Services and Federal Programs
Jo Ellen Shaeffer, Director, Assessment and Accountability

Subject: Opting-Out of State Testing 53A-15-1403 (9)

There continues to be some confusion about students and/or parents opting-out of SAGE or other state-wide testing. Please be aware of the following as you have conversations with parents about opting-out of testing and in the development of opt-out forms.

1. After consultation with Chris Lacombe, Assistant Attorney General, it has been determined that paragraph #1. 53A-15-1403 (9) (a) applies to state administered tests. There is no legal definition of "state administered test", therefore, a plain meaning interpretation of this term must be used. The SAGE Summative and Interim tests are state administered tests as well as the ACT, ASAVB and NAEP tests. Thus, parents have the right to opt their children out of these tests. Ambiguity exists whether the ACCESS and UAA testing as well as the Direct Writing and reading assessments constitute statewide administered tests. As a result, Assistant Attorney General Lacombe is of the opinion that students may not opt out of these tests.
2. When a student over 18 years old, or a parent or guardian opts-out of a state-level test, there is no requirement for an optional or alternative assessment to be given. For example, opting-out of a test taken on a computer does not necessitate that a "paper-pencil" test be offered as a replacement.
3. When a student over 18 years old, or parent or guardian opts-out of a state administered test, no academic penalty shall result for the student. If teachers/schools use any of these tests for grading/promotion decisions, some alternative assessment will need to be provided.
4. Opting-out of SAGE summative testing, and participating in SAGE summative testing, both result in de-identified and aggregated student data being reported to the federal government. The difference in the data shared on all public school students as required by the Elementary and Secondary Education Act (ESEA) is that the proficiency level for a student who opts out will not be reported while a tested student's proficiency level will be reported as the proficiency level (1 – 4) determined by the testing.
5. Any student who is in school and not participating in testing should be engaged in a meaningful educational activity. Students not participating in any testing should not be singled out in any negative way nor should the student or the class be administratively punished in any way because a student opts out of testing. Items #6 and #7 address potential consequences for teachers and schools as a result of

opting-out.

6. As per action taken by the Utah State Board of Education on April 4, 2014, a student who opts- out of testing will not receive a proficiency score, and for State purposes will not be counted against participation rates. However, these students will be reported as non-participants on federal reports and accountability and this may impact an LEA's qualification for and the receiving of certain federal dollars.

7. A student who has not opted-out as allowed under 53A-15-1403(9) and is absent from school, and therefore does not participate in testing, is counted as a non- participant (both State and federal reporting) and may impact the school's participation score which is included in the calculation for the school's letter grade. An absent student is not included in calculating proficiency for a class, grade, or school.