

Date: February 2, 2015

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-15-1503 (9)

The policy for students and/or parents opting-out of testing for the 2014/15 school year, which has been reviewed and approved by Chris Lacombe, Assistant Attorney General, is as follows:

1. Specific Assessment Requirements

SAGE (Student Assessment of Growth and Excellence) Summative Tests
ACT (American College Test)
NAEP (National Assessment of Education Progress)

Because the SAGE Summative tests are required to be administered by all LEAs, UCA §53A-15-1403 (9) (a)'s opt out provision was determined to be applicable to these tests. Likewise, this opt out provision was determined to apply to the ACT because it is also required to be applied statewide. In addition, the National Assessment of Educational Progress (NAEP) exam was also subject to the opt-out provision because UCA §53A-15-1403 (9) (a) expressly includes this examination. In other words, **all of these tests are subject to opt out provisions.**

SAGE (Student Assessment of Growth and Excellence) Interim Tests

Because SAGE Interim is optional and not required to be administered by all LEAs, **parents do not have the option to opt out of these examinations** if their LEA chooses to administer this examination.

DIBELS (Dynamic Indicators of Basic Early Literacy Skills)

This examination constitutes a reading fluency assessment. While the vast majority of Utah LEAs use the DIBELS assessment, LEAs have the option, upon receipt of obtaining a State Board of Education waiver, of using other examinations to assess reading fluency. Some Utah LEAs do not use DIBELS and use, in the alternative, AIMS Web, Easy CBM and Direct Reading Assessment, to assess reading fluency. Since DIBELS is not required to be administered statewide, **parents do not have the option to opt out of this examination** if their LEA chooses to administer this examination.

ACCESS (Assessing Comprehension and Communication in State to State)

Assessing Comprehension and Communication in State to State (“ACCESS”) is a test which measures language proficiency for English Language learners who have limited English proficiency due to their cultural background or immigrant status. As part of the Title III program, a federal program which allocates funding to provide language instruction, Utah LEAs must meet achievement targets for English Language learners. As part of this Utah’s Title III grant, it is required by federal law to administer this test. See Elementary and Secondary Education Act (“ESEA”) §§1111 (b) (3) (C), 1111 (b) (7) and 3116 (b) (d). Given this test’s limited administration and Title III requirement, it was determined that this test was not a “test that is administered statewide”. Thus, **UCA §53A-15-1403 (9) (a)’s opt out provision is not applicable.**

UAA (Utah’s Alternative Assessment)

Utah’s Alternative Assessment (“UAA”) is designed for students with significant cognitive disabilities. UAA is the alternative assessment for SAGE testing. Beginning with the 2014/15 school year, the UAA is the alternate assessment for science and the Dynamic Learning Map (DLM) is the alternate assessment for English language arts and math. While USOE, in the aforementioned September 22 memorandum, determined that SAGE Summative and Interim testing were subject to UCA §53A-15-1403 (9) (a)’s opt out provision, ambiguity exists whether UAA, an assessment administered to less than 1% of Utah’s student population, constituted a “test that is administered statewide.” A legal opinion, based upon a plain meaning interpretation was provided that the UAA, an assessment administered to less than 1% of Utah’s student population was not a “test that is administered statewide.” Thus, UCA §53A-15-1403 (9) (a)’s opt out provision was determined to not be applicable. However, upon further review it has been determined that because the UAA is the alternate to SAGE summative and SAGE Interim, **students with disabilities should be accorded the same opt out provision for UAA as other students have for SAGE Summative and SAGE Interim.**

Locally developed and/or administered Assessments (formative or benchmark)

Because locally developed and/or administered assessments are not required to be administered by all LEAs, **parents do not have the option to opt out of these examinations** if their LEA chooses to administer these examinations.

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.
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-15-1503(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.

