

**Assembly Committee on Government Accountability & Oversight  
June 7, 2017**

**Wisconsin Department of Public Instruction  
Testimony in For Information Only on Assembly Bill 304**

Representative Hutton and members of the committee, thank you for holding a hearing on Assembly Bill (AB) 304. We appreciate Rep. Thiesfeldt's consultation on this bill, and the Department of Public Instruction (DPI) is here today to answer questions and provide testimony for information only.

AB 304 would extend the state's current opt out policy uniformly to all tested grades. While the DPI continues to have concerns around the unintended consequences of opting-out, we also understand the goal of treating all grades the same.

- The proposed bill will create a uniform standard around parental opt-out of assessments for all grades. Currently, opting-out is only specified in grades 4, 8 and 9-11.
- State assessments are used to calculate achievement gaps as well as district and school report cards, so the validity of data is extremely import.
- Opting-out tends to be more prevalent among the highest- and lowest-performing students, which can distort results.
- Wisconsin's policy has been to balance the student's rights to opt-out with data quality and federal requirements.
- The DPI has phased out the test participation penalty for district and school report cards; however, schools still must meet the 95 percent federal testing requirement.

**Background:**

Under current law **s. 118.30 (2) (b) 3**, a school board, an operator of an independent charter school, and a governing body of a private school participating in a parental choice program must excuse a pupil in 4th, 8th, 9th, 10th, or 11th grade from taking the state assessment upon request from a parent or guardian. Currently, the DPI's practice has been to let school districts decide how to handle opt-out requests in grades 3 and 5-7.

Historically, the district and state report cards included a penalty for missing the 95 percent testing requirement. However, these have been phased out over the last two years.

The **Every Student Succeeds Act (ESSA)** contains a provision that assures nothing in its requirements relating to academic assessments (main and alternate) may be interpreted to override a state's opt-out provisions that are authorized by law.

## District & School Report Cards

Original design: To accommodate federal testing requirements, Wisconsin’s district and school report card originally imposed a penalty for missing the 95 percent testing requirement. To receive a penalty, the district or school had to miss the 95 percent threshold in BOTH the current year and over a three-year average.

District or schools that fell below 95 percent on both metrics received a 5-point deduction from their total score. Districts or schools that fell below 85 percent on both metrics received a 10-point deduction.

Removal of penalty: Federally, the reauthorization of Elementary and Secondary Education Act (ESEA) as ESSA shifted the focus of accountability from districts to schools. Based on this federal policy change, and supported by extensive stakeholder and legislative engagement, the DPI removed the test participation deduction for districts in the 2015-16 report card and subsequently for schools in the forthcoming 2016-17 report card.

Future considerations: Test participation will be reported but not included in the scores. The DPI will monitor test participation statewide with a particular focus on vulnerable subgroups in order to guard against selective testing. Test participation information will be shared with the Equity Council (or its successor), stakeholders, and state policy makers. Those groups will be consulted prior to any change in test participation policy.

## Federal Law

The Every Student Succeeds Act (ESSA): Federal law requires students to be assessed in grades 3-8 and once in high school. Federal law expects schools and districts to test at least 95 percent of all students and each subgroup of students or face a penalty.

20 U.S.C. 6311(c)(4)(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)...*

This means students who do not participate in required state testing, for any reason, count “against” proficiency rates for federal accountability purposes (i.e. non-tested are included in the denominator for proficiency calculations).

**This is different than Wisconsin’s state accountability system, which does not include non-tested students in any achievement measures.**

Potential Actions: Under the direction of the U.S. Department of Education (USED), the DPI is required to enforce testing requirements in districts that chronically fail to assess students or that proactively encourage students to opt-out. These sanctions are outlined in dear colleague letters to Alaska, New Jersey, Montana, and West Virginia, and most recently to the Oregon

Department of Education in a May 27, 2015, letter and include:

- Notification of non-compliance
- Increased monitoring
- Conditioning federal Title I funds or ESEA Waiver provisions
- Placing the state on “high-risk” status (34 C.F.R. §80.12)
- Issuing a cease and desist order (GEPA section 456 (20 U.S.C. §1234e))
- Entering into a compliance agreement (GEPA section 457 (20 U.S.C. §1234f))
- Withholding all or a portion of the state’s Title I, Part A administrative funds (ESEA section 1111(g)(2) (20 U.S.C. §6311(g)(2)))
- Suspending and then withholding all or a portion of the state’s Title I, Part A programmatic funds (GEPA section 455 (20 U.S.C. §1234d))

Wisconsin’s Process: In 2015, the DPI was notified that three districts had proactively encouraged students to opt out, resulting in extremely low test participation, which resulted in:

1. all three districts were contacted by the Deputy State Superintendent;
2. districts were subsequently sent a letter (attached) placing them on “high-risk” status;
3. districts were required to submit a corrective action plan to ensure adequate testing in future years (failure to comply risked reduction in federal funding); and
4. all three districts complied and met the 95 percent testing threshold the following year.

## State Law

Current law: Wis. Stats. 118.30(1m) specifically requires districts to either administer the state assessment or develop their own assessment in grades 4, 8, and 9-11. Assessment in grades 3 and 5-7 are exclusively governed by federal law.

Per Wis. Stats. 118(2)(b)3, *“Upon the request of a pupil’s parent or guardian, the school board shall excuse the pupil from taking an examination administered under sub. (1m),”* which are the state-required assessments above.

The proposed legislative draft would extend the pupil opt-out to all grades.

The DPI’s current guidance: *“A parent must submit a written request for student opt-out to the principal or the school board. Per Wis. Stats. 118.30(2)(b)3., if the student is in grades 4, 8, and 9-11 the request must be granted. However, if the student is not in the above mentioned grade levels, the decision to grant the request is at the discretion of the school board.”* **This guidance would be modified to reflect changes in law.**

Opt-out Laws in Other States: According to the Education Commission of the States (ECS), few states have assessment opt-out laws.

- **California, Colorado, Oregon, and Utah** have laws or regulations expressly allowing parents to opt-out of assessments for any reason. (Legislative proposals have been recently introduced in **New Jersey** and **North Dakota**).
- In **Minnesota** and **Michigan** opt-outs are permitted by the department of education.

- **Oregon and Pennsylvania** excuse students to accommodate religious beliefs.

### **Opt-Out Levels in Wisconsin**

Historically, Wisconsin has a very low opt-out rate. For the period of **2012 through 2014**, the public school parent opt-out rate has averaged 0.1 percent (Chart 1). The choice school parent opt-out rate has averaged 2 percent (Chart 2).

**Chart 1: Public School Opt-Outs at the State Level (2011-2014)**

<b>School Year</b>	<b>Enrollment</b>	<b>Number of Parent Opt-outs</b>	<b>Percent of Parent Opt-Out</b>
2013-14	432,667	583	0.1%
2012-13	432,103	388	0.1%
2011-12	431,363	500	0.1%

**Chart 2: Choice School Opt-Outs at the State Level (2011-2014)**

<b>School Year</b>	<b>Enrollment</b>	<b>Number of Parent Opt-outs</b>	<b>Percent of Parent Opt-Out</b>
2013-14	13,601	368	2.7%
2012-13	12,614	290	2.3%
2011-12	11,690	140	1.2%

During the **2015 Badger Exam**, parent opt-outs did increase to 2.1 percent; however, overall remained at a relatively low level (Chart 3). Over that same period, the choice school parent opt-out rate was around 5 percent (Chart 4).

**Chart 3: Public School Opt-Outs at the State Level (2014-2015)**

<b>School Year</b>	<b>Enrollment</b>	<b>Number of Parent Opt-outs</b>	<b>Percent of Parent Opt-Out</b>
2014-15*	363,093	7,444	2.1%

*\*2014-15 does not include 10<sup>th</sup> grade students as the Badger Exam was administered to grades 3-8 only.*

**Chart 4: Choice School Opt-Outs at the State Level (2014-2015)**

<b>School Year</b>	<b>Enrollment</b>	<b>Number of Parent Opt-outs</b>	<b>Percent of Parent Opt-Out</b>
2014-15*	13,012	652	5.0%

The Wisconsin Forward Exam was first administered during the 2015-16 school year and replaced the Badger Exam. There were 2,986 total parent opt-outs, which is less than 1.0 percent (Chart 5).

**Chart 5: Forward Exam Opt-Outs for Grades 3-8 at State Level (2015-2016)**

Grade	Enrollment	Number of Parent Opt-Outs	Percent of Parent Opt-Out
3	62,631	396	0.6%
4	61,334	491	0.8%
5	61,192	445	0.7%
6	61,836	450	0.7%
7	61,328	448	0.7%
8	61,208	756	1.2%
Totals	369,529	2,986	0.81%

There were **662 choice** school parent opt-outs, which is around 4.9 percent (Chart 6)

**Chart 6: Choice School Forward Exam Opt-Outs for Grades 3-8 at State Level (2015-2016)**

Grade	Enrollment	Number of Parent Opt-Outs	Percent of Parent Opt-Out
3	2,515	94	3.7%
4	2,377	117	4.9%
5	2,219	123	5.5%
6	2,107	125	5.9%
7	2,108	99	4.7%
8	2,101	104	5.0%
Totals	13,427	662	4.9%

There were 278 parent opt-outs for the 2016 ACT Exam representing a 0.4% opt-out rate. (Chart 7)

**Chart 7: ACT Exam Opt-Outs at the State Level for Grade 11 (2015-16)**

Enrollment	Number of Parent Opt-Outs	Percent of Parent Opt-Out
62,377	278	0.4%

No opt-outs were reported for Choice schools administering the ACT in 2015-16.