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Department of Education Won't Punish N.Y. for High Opt-Outs, Report Says

By Lauren Camera on August 21, 2015 3:36 PM

UPDATED

A week after the New York state education department [reported](#) that 20 percent of students in grades 3-8 opted out of statewide reading and math tests last year, it looks like we finally have an answer as to whether they'll feel the wrath of the U.S. Department of Education—at least for now.

The department underscored, however, that it will determine next steps based on the adequacy of New York's actions.

Federal law requires each school to test at least 95 percent of its students or else the district or state could face sanctions, some as severe as losing Title I money for low-income students. That requirement must be met for all students in a school, as well as for subgroups of students, such as those living in poverty or from racial-minority groups.

But the chancellor of New York's State Board of Regents, Merryl Tisch, said that the Education Department told the state's education department that it was leaving any decision about financial penalties to the state, according to [a story in the New York Times](#).

That doesn't come as too much of a surprise. After all, states and schools that miss the 95 percent threshold are allowed to average participation rates over a two- or three-year period to help meet it.

The Times story noted that Tisch said the state did not plan to withhold money from districts, but that state education commissioner, MaryEllen Elia, was expected to present a plan to the Board of Regents in September about how it would work with superintendents and principals whose districts and schools had high opt-out rates.

The larger problem nationally, however, seems to be that the federal participation mandates are bumping up against [a dizzying number of state- and district-specific policies](#) that run the gamut from allowing parents to withhold their children from a state test to explicitly mandating that all students must take the state test. And amid antipathy in many places toward the Common Core State Standards and aligned assessments, the myriad opt-out policies are proving confusing for state education departments.

[UPDATE 5:15 PM]:

The Education Department clarified, however, that just because it hasn't had to take action to enforce the federal law, doesn't mean it wouldn't.

"The Department has not had to withhold money - yet - over this requirement because states have either complied or have appropriately addressed the issue with schools or districts that assessed less than 95 percent of students," a spokeswoman for the department said. "The U.S. Education Department has not yet had to take that kind of enforcement action because states have either met the law's requirements or have appropriately addressed this with schools or districts that assessed less than 95 percent of students."

She added: "As we have said repeatedly, it is the responsibility of states to ensure that all students are assessed annually because it gives educators and parents an idea of how the student is doing and ensures that schools are paying attention to traditionally underserved populations like low-income students, students of color, students with disabilities and English language learners."

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