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Testimony of

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Before the Education Committee

**HB 5555 AAC THE MINIMUM BUDGET REQUIREMENT AND PROHIBITING THE
INCLUSION OF PARTICIPATION RATES FOR THE STATE-WIDE MASTERY
EXAMINATION IN THE CALCULATION OF A SCHOOL DISTRICT'S
ACCOUNTABILITY INDEX SCORE**

March 7, 2016

Good afternoon Senator Slossberg, Representative Fleischmann, and members of the Education Committee. My name is Ray Rossomando, Research and Policy Specialist with the Connecticut Education Association. CEA helps the 43,000 active and retired teachers across the state to have a greater voice in the decisions that affect our schools.

I am testifying today on HB 5555 regarding participation rates in federally required annual testing.

CEA supports legislation that would prevent the State Department of Education from unfairly and unilaterally penalizing districts for the legal decisions of parents to opt their children out of the statewide mastery/SBAC exam.

To date, the State Department of Education has exceeded its authority on a number of fronts to impose punitive measures on school districts for participation rates that do not reach the 95% threshold sought by the No Child Left Behind (NCLB) act. For example, SDE sent letters to districts threatening to withhold federal education dollars this year if too many parents opt their children out of the federally required annual SBAC test.

The districts that received this threat **risk losing \$21.5 million** of federal education funding at the hands of SDE, all without any consideration by the Connecticut General Assembly. This is unconscionable.

SDE Opt-Out Penalties: Examples of the punitive measures being implemented by SDE without legislative consideration include:

- Penalizing schools and districts by dropping their school performance indicator (category) by one level for participation rates below 95% (SDE 8/3/15 Federal Waiver submission)
- Prohibiting districts from receiving relief under the state’s Minimum Budget Requirement or MBR (See SDE Agency Proposals 1/6/16 and SB175)
- Imposing an unfunded mandate for districts to develop and submit plans to decrease the number of parents who choose to opt their child out of statewide testing (SDE Letter to US DoE 12/4/15)
- Threatening to withhold all federal education funds (up to \$21.5 million) in letter to districts stating that **“Federal funds will be withheld** if participation rates are not at or above 90 percent in 2015-16” (SDE Letter to districts Jan./Feb. 2016, emphasis added and SDE Letter to US DoE 12/4/15)

Federal Education Funds by District - 2015	
https://www.csde.state.ct.us/public/dgm/grantreports1/HPayMain.aspx	
District Receiving SDE Letter withholding "Federal Funds"	Federal Education Funds (Source: SDE 3/6/16)
Chaplin	\$57,042
Danbury	\$9,241,712
EASTCONN	\$500,053
Hampton	\$58,413
Madison	\$911,181
New Fairfield	\$717,942
North Haven	\$1,285,454
Norwich Free Academy	\$554,884
Redding	\$283,771
Regional High School District 01	\$716,834
Regional School District #6	\$369,003
Ridgefield	\$1,357,363
Sharon	\$43,133
Sherman	\$117,985
The Gilbert School	\$135,822
Trumbull	\$2,113,235
Westbrook	\$285,346
Weston	\$544,788
Westport	\$2,256,690
Windsor	\$2,748,152
TOTAL at Risk	\$21,550,653

As you know, federal funds help address the neediest students who face challenges associated with poverty and disabilities. They help districts provide needed resources and professional training. This is not a time to leave federal dollars on the table and the additional penalties being implemented by SDE are unwarranted.

SDE and ESSA: As debate on the opt-out issue has intensified, there has been much misinformation about state and federal law regarding opt-out. This has put superintendents and educators in an untenable position of allowing parents to exercise their rights under law to opt their child out of testing while being threatened and pressured by the state and federal education agencies to stop parents from exercising this right. This situation is not conducive to improving learning environments or building trusting relationships among parents, boards, and educators in our communities. We all need to be on the same page and fully understand the impact of federal laws.

It appears that SDE's punitive measures are being carried out under the last gasps of authority under NCLB, which evaporate with the federal waivers on August 2, 2016. To the best of our knowledge, SDE is not required to implement any of these measures and has produced no document proving otherwise. New York, which has a far greater percentage of students opting out, has not chosen the punitive route chosen by SDE. Why should we?

Additionally, it appears that SDE has sought to tie the legislature's hands by including in waivers (August, 2016) and plans (December, 2016) submitted to the US DoE provisions that should by all measures be decided by legislature. As Connecticut has done in the past, SDE could resubmit revisions to its waiver and plans to the US Department of Education. There is no reason for the legislature to cede its authority to the SDE; and there is every reason for the checks and balances that exist between the branches of state government to be employed.

Furthermore, there is substantial clarity in the federal law regarding deference to state-level policymaking. This is clear on many fronts, including Opt-Out. ESSA reads:

"RULE OF CONSTRUCTION ON PARENT RIGHTS.—Nothing in this paragraph shall be construed as preempting a State or local law regarding the decision of a parent to not have the parent's child participate in the academic assessments under this paragraph." (p. 76)

This excerpt from prohibitions on the Secretary of Education is another example, of many, that defers decisions to the states:

"(e) PROHIBITION.— IN GENERAL.—Nothing in this Act shall be construed to authorize or permit the Secretary ... as a condition of approval of the State plan, or revisions or amendments to, the State plan, or approval of a waiver request submitted under section 8401, to ... prescribe ... the way in which the State factors the requirement under subsection (c)(4)(E)(i) [which is the 95% participation rate] into the statewide accountability system under this section" (pp. 102-104)

And, as CEA shared previously with committee members, ESSA clearly defers to state lawmakers on opt-out by requiring school districts to honestly inform parents of their opt-rights, whatever such rights may be by law. ESSA requires that a school district

“shall notify the parents of each student attending any school receiving funds under this part that the parents may request, and the local educational agency will provide the parents on request (and in a timely manner), information regarding any State or local educational agency policy regarding student participation in any assessments mandated by section 1111(b)(2) and by the State or local educational agency, which shall include a policy, procedure, or parental right to opt the child out of such assessment, where applicable.” (p. 145)

Given the passage of ESSA, sun setting of NCLB, and the clear deference to states on matters important to communities, it is incumbent on the legislature to deliberate on this issue, and many others contained in ESSA. CEA offers some suggestions for consideration on the opt-out issue.

Options for Connecticut: CEA supports the intent of HB5555 to prohibit the use of participation rates in the calculation of a district’s accountability index. However, it currently does not prevent SDE from acting unilaterally to impose other penalties as it has recently done. For example, the proposed change would not address SDE’s punitive withholding of millions of dollars of federal funds from districts where parents exercise their rights. Consequently, CEA urges the committee to include language that is more comprehensive. We recommend that you consider legislation that would:

1. Prohibit SDE from withholding federal education funds without legislative authority or a federal requirement to do so.
2. Affirmatively establish parental rights to exercise opt-out choices and include, in law (10-14n), a statement that must be used by school districts and SDE to inform parents of such right, as required under ESSA.
3. Define in statute how students whose parents opt them out of testing will be counted for the purpose of reporting school and district participation rates.
4. Require SDE to provide incentives, not penalties, for increasing participation rates.

Lastly, if increasing participation rates is a goal, then an important question should be asked:
“Why are parents choosing to opt their child out of SBAC in the first place?”

The phenomena of parents opting their children out of federal testing erupted after 2009, just as mounting research began showing the ill-effects of the high-stakes testing strategy embedded in NCLB. The development of federally funded national standards and related development of national tests through the US DoE’s funding of testing consortia SBAC (aka “Smarter-Balanced”) and PARCC raised further concerns and questions among parents, experts, and educators.

Opt-out has also been prompted by the intensifying pressure from the US DoE to link scores on tests like SBAC to ill-conceived high-stakes policies like school takeovers and teacher evaluation. Even experts who developed the SBAC, like James Popham, say such tests are not valid for these purposes. They also point out that high-stakes ultimately distort the benefits of the test and its results. Many have also noted significant test-biases that negatively impact children in low income communities and the failure

of consortia tests (SBAC and PARCC) to provide teachers with any actionable or timely information for use in the classroom.

Yet since this trend began, there has been no formal legislative hearing on opt-out. Connecticut parents, experts, educators, and others have had little to no formal opportunity to share their reasons for choosing not to participate in testing and their concerns about the test itself. But we know that their concerns are significant. Numerous polls and surveys indicate a great need for the legislature to consider our policies on statewide testing options. Here are some key findings:

- 77% of parents do not agree that “statewide assessments are an appropriate way to assess student mastery of material” (CT-PTA poll, State Mastery Exam Committee, Jan. 2016).
- 67% of parents with school children think that there is “too much emphasis on standardized testing in the public schools” (Gallup, Aug. 2015).
- 85% of administrators believe that SBAC has not helped student learning (CT Association of School Administrators, CASA, survey release 2/22/16).
- 91% of administrators believe that the SBAC test is NOT a useful indicator of teacher or administrator effectiveness (CASA).
- 63% of parents with school children oppose using standardized test scores to evaluate teachers. (Gallup).

Clearly, the reason that so many people across the country are rejecting SBAC testing is the SBAC test itself and the invalid ways that it is being used. As the committee considers ways to address participation rates, CEA urges you to also consider reducing the high stakes that distort the test and increase undue stress for students and educators alike.

The committee is also considering SB380 today. SB380, which would decouple annual federal testing from teacher and administrator evaluations, is one research-based and common-sense way to do this. CEA also urges committee members to consider requiring the state Mastery Examination Committee to entertain RFPs from testing companies to assess Connecticut’s true testing options. To date this has not been done, and, as a result, the negative experiences of SBAC persist, and we continue to throw good money after bad.

In closing, CEA thanks committee members for taking up this critical issue and we respectfully request consideration of our position. CEA supports the separation of powers and democratic process that ensure that the voices of parents, educators, and voters are considered by the legislature on important policy matters. We urge action on this bill.

Thank you.

