



N.Y. Teachers Union Sues Over Common Core Confidentiality Agreement

New York State United Teachers has sued the state education department this week over a state stipulation that teachers can be punished for discussing standardized-test items. According to the union, the stipulation is a violation of the teachers First Amendment rights, as well as their right to equal protection.



The lawsuit, filed on October 9 in federal court, includes five teachers who have administered or scored state exams aligned to Common Core State Standards. The *Albany Times Union* reports that the lawsuit focuses on grades 3-8 math and English tests.

Education Week reports, "NYSUT has been criticizing the state's common-core testing rollout for some time, especially regarding the education department's decision not to publicly release all of the test items after the test is completed and graded."

The union also asserts that the confidentiality agreement teachers are forced to sign, which states they will not reveal items or answers to colleagues or students, is nothing more than a "gag order."

"Teachers must be free to protect their students and speak out when they have concerns about state tests," NYSUT President Karen Magee said. "Instead, they are under a 'gag order' to be silent — and that is hurting children."

Teachers who administer the tests have long been subjected to confidentiality agreements at their local schools, but this year marks the introduction of a state-generated agreement, which warns that any violations could impact a teacher's employment and certification and could warrant potential criminal charges.

Many teachers are suspicious about the state's "gag order," viewing it as a way to suppress any further embarrassment for the controversial rollout of Common Core, since some of the questions on the first batch of tests drew considerable public criticism. "This is related to the main issue, which is whether teachers should be evaluated on these tests," says Adam Urbanski, president of the Rochester Teachers Association. "Is it fair to evaluate teachers on tests that they can't see or discuss?" Urbanski contends that the state's actions raise important questions regarding the integrity of the tests. "Why did they have so much concern about revealing the tests?" he says. "Is this a form of secrecy to cover something up?"

But the Education Department denies that the confidentiality agreement is a virtual "gag order."

"Teachers are absolutely free to talk about the portions of the test that have been released," said SED spokesman [Dennis Tompkins](#). "The only prohibition is for secure, non-released test questions."



Written by [Raven Clabough](#) on October 20, 2014

Under pressure from various groups, New York released 50 percent of the questions on 2014 elementary- and middle-school exams and all Regents exam questions that were not being tested in the field, but the state elected to withhold some questions so that they may be recycled.

The state education department has defended the stipulation asserting that test development and administration is more expensive if all items are released because they cannot be reused.

According to Tompkins, the department has “repeatedly requested additional funding” from the legislature to print more versions of the exams, which would then permit the state to release more of its questions. At the moment, the state is only able to print its exams in Albany and produce four versions of each exam.

“Obviously, items to be used on future tests must be kept secure,” spokesman Dennis Tomkins said in a statement. “We look forward to NYSUT’s vigorous support for our budget request.”

The testing and Common Core standards have been a point of contention in New York over the course of the last year, with the union calling for boycotts of the field tests. “New York’s over-reliance on standardized tests continues to have a negative effect on our students,” New York State United Teachers President Karen Magee said in a statement. “NYSUT applauds those school districts that have recently opted out of this year’s field testing.”

School districts in New York have started petitions demanding the Education Department release entire exams, with some of the petitions acquiring over 5,000 signatures. In Westchester County, a “Release the Tests” drive was held with parent groups submitting over 3,000 e-mails to state officials.

Controversy over the Common Core standards tests has pervaded the New York state gubernatorial race in the 2014 elections. Andrew Breitbart’s *Big Government* reports, “The governor’s race pits incumbent Andrew Cuomo (D), who supports the Common Core standards, against Republican Rob Astorino, who is adamantly opposed to the nationalized standards and has secured a ‘Stop Common Core’ ballot line for the November general election.”

Cuomo touted the benefits of the Common Core standards to reporters in Albany last week. “We’re now saying to the public education system: You have to perform, and you’re not just going to get funded for process,” he said. “You’re going to get funded for performance. That is a big deal, and that is a big shift when you’ve had a public monopoly since its existence.”

Astorino, on the other hand, has announced that he plans to to repeal the Common Core standards and replace them with in-state developed standards, if elected. “Now we know what we’re getting into (with Common Core): a true experiment, an experiment where we may not get the answers for 10 or 15 years to see if it ever worked,” Astorino said last month. “And in the meantime, we’re subjecting a generation of kids to something they can never get back.”

There are indications from voters in New York that the Common Core standards may play a leading role in the outcome of the November elections. Lisa Rudley, co-founder of New York State Allies for Public Education and parent in the Ossining school district in Westchester County said, “I think you will see a lot of votes that otherwise would have gone to Cuomo who will go to Astorino ... because of this issue.

The [latest test scores](#) in New York show students scoring below the proficiency level in both math and English, serving to fuel criticism over the exams from frustrated parents and teachers whose performance evaluations depend upon student achievement on these exams.



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