



Response to Dire Consequences Predicted for Students, Employees, & Funding if Lee County Opt's Out of State Tests

Karen R. Effrem, MD – Executive Director

INTRODUCTION & EXECUTIVE SUMMARY

According to a [memo by Lee County board attorney Keith Martin](#), the historic and courageous decision of the [Lee County Board of Education to opt out of mandated state tests](#) will potentially have dire, “sky is falling” consequences. Sadly, this memo is being used to pressure and threaten the board, and particularly Mary Fischer, who was the deciding vote in the 3-2 decision, so much so that she has requested an emergency meeting to [rescind her vote](#) and therefore the board’s decision. Superintendent Nancy Graham, who was hired by the board and serves at their discretion, instead of carrying out the board’s decision has been publicly undermining them. There is such terror in Tallahassee and among shadow governor Jeb Bush and his corporate cronies about districts actually asserting their constitutional authority to “operate, control and supervise all free public schools within the school district” (Florida Constitution Article IX, Section 4b), that they are spewing forth all sorts of misinformation. The problem is that the memo is incomplete in its discussion of the legal situation and alternatives for both individuals and the county. Below are summary and detailed responses to their points on three of the most important issues – effects on students, teachers/principals, and on funding.

- 1) **Graduation Issues** – Alternatives to the federally and state mandated tests [[F.S. 1008.22\(3\)\(a\)](#)] and end of course exams [[F.S. 1003.4282](#)] already exist in statute that would legally allow graduation with a standard diploma.
- 2) **Course Credits for EOCs Constituting 30% of the Final Grade** - The statute is ambiguous about whether the earning the comparative score replaces the 30% requirement for a student’s final grade and Algebra I passage and course credit for graduation with a standard diploma. [[F.S. 1003.4282](#)] There are no alternative tests for other state mandated EOCs that consist of 30% of the final grade.
- 3) **Third Grade Retention** - Florida statute and State Board of Education rule allow third grade students to submit a portfolio or take alternative assessments to avoid mandatory retention [[F.S. 1008.25\(6\)\(b\)](#)] and [[Rule 6A-1.094221](#)]
- 4) **Opportunity Scholarships** – These are based on the school grading system which in turn is based on the state tests, for which there exist the alternatives already discussed above. Additionally, with the school grading system is in chaos with severe questions about its validity and reliability, the assessments not being counted toward school grades for at least another year and [the Florida School Boards Association](#) asking for longer, and very [few schools in Lee County meeting the qualifications](#) outlined in statute to qualify for their students to receive opportunity scholarships, a reasonable alternative could easily be developed in policy, rule or legislation.
- 5) **Effects on Teachers and Principals** – The same alternatives available in statute and the same problems with the school grading system described above for students answer the concerns for employees.
- 6) **Special Education Funding** – Alternative assessment possibilities exist in both federal [[Public Law 108-466, Section 6312\(a\)\(16\) \(IDEA\)](#)] and state statute [[F.S. 1008.25\(6\)\(b\)](#)].

- 7) **Federal No Child Left Behind Funding & Waivers** – Besides being a major violation of the Tenth Amendment to the U.S. Constitution; provisions of both No Child Left Behind [[Public Law 107-110, Title I, Section 1111\(b\)\(3\)](#)] and the [waivers are selectively and arbitrarily enforced](#), the conditional [waivers are illegal](#) and the incentivizing of Common Core and the federal assessments through the waivers and Race to the Top are in [violation of three federal statutes](#).
- 8) **State Funding** – It is not very likely that elected legislators who face constituents seeking relief from the out-of-control testing will sanction other elected officials who are following the Constitutions and listening to their constituents if the appointed State Board refers incomplete and biased information to the legislature about non-compliance. There are legal, constitutional and political reasons why the State Board of Education would be in error for withholding money from Lee County or any other district that asserts their local autonomy and listens to their constituents.
- 9) **Constitutional and Statutory Violations of Current Testing System** – These are outlined in our paper, [Constitutional and Statutory Violations of Current State and Federally Mandated Student Assessment Program](#). These include violations of the Fourth and Tenth Amendments to the US Constitution and Article IX, Section 4(b) of the Florida Constitution; violation of the federal General Education Provisions Act, the Elementary and Secondary Education Act, and the Department of Education Organization Act, all of which declare state and local control of educational programs; and violation of Florida statutes regarding implementation of the testing system [[F.S. 1008.22](#)], technological load testing [[F.S. 1003.41](#) & [1008.22](#)], and prohibition on practicing psychology or school psychology without a license [[F.S. 490.002](#)]

EFFECTS ON STUDENTS – GRADUATION WITH A STANDARD DIPLOMA, COURSE CREDITS

The memo needlessly alarms parents that the county opting out will prevent students from graduating, receiving a standard diploma, course credits in classes where End of Course (EOC) exams comprise 30% of a student's final grade, or Opportunity Scholarships. Superintendent Graham in her scorched earth and highly inappropriate campaign against this decision says that the decision will "harm children." Here is the information pertaining to graduation and course credits:

Students cannot complete graduation requirements, leading to issuance of a standard high school diploma. Section 1003.4282, Florida Statutes, requires passage of the 10th Grade FCAT or ELA Assessment and the Algebra I EOC assessment as prerequisites to graduation. Additionally, the Statute requires that if a student has met all requirements for graduation with the exception of passage of the statewide assessments, the School District is required to provide the student an opportunity to continue attending high school for one (1) more year to receive instruction and preparation to attempt to pass the statewide assessments.

· High school and middle grade students may not be able to obtain credit for completion of courses which require that 30% of their grade be based on the student's performance on the end of course test, Sections [1003.4282](#) and [1003.4156](#), Florida Statutes. Additionally, students who do not pass an end of course assessment required to receive a standard high school diploma, must be placed in a segmented remedial online course in order to avoid loss of the FTE for that course and student, Section 1011.61, Florida Statutes.

Yet, this analysis is incomplete and appears deceptive, because it leaves out what the language says about earning a “comparative score” or a “concordant score” on a different assessment. Here is the language from the referenced Florida Statute [1003.4282](#) regarding the graduation requirement of passing the English assessment and the Algebra I End of Course exams:

(3) STANDARD HIGH SCHOOL DIPLOMA; COURSE AND ASSESSMENT REQUIREMENTS.—

(a) Four credits in English Language Arts (ELA).—The four credits must be in ELA I, II, III, and IV. A student must pass the statewide, standardized grade 10 Reading assessment or, when implemented, the grade 10 ELA assessment, **or earn a concordant score**, in order to earn a standard high school diploma. (Emphasis added)

(b) Four credits in mathematics.—A student must earn one credit in Algebra I and one credit in Geometry. A student’s performance on the statewide, standardized Algebra I end-of-course (EOC) assessment constitutes 30 percent of the student’s final course grade. A student must pass the statewide, standardized Algebra I EOC assessment, **or earn a comparative score**, in order to earn a standard high school diploma. A student’s performance on the statewide, standardized Geometry EOC assessment constitutes 30 percent of the student’s final course grade. (Emphasis added)

The statute is ambiguous about whether the earning the comparative score replaces the 30% requirement for a student’s final grade and Algebra I passage. At this time there are no alternatives for comparative scores for the EOCs in Biology I and Geometry EOCs and the requirement that those scores constitute 30% of a student’s final grade. Both Biology I and Geometry are required for graduation.

(3) STANDARD HIGH SCHOOL DIPLOMA; COURSE AND ASSESSMENT REQUIREMENTS.—

(a) Four credits in English Language Arts (ELA).—The four credits must be in ELA I, II, III, and IV. A student must pass the statewide, standardized grade 10 Reading assessment or, when implemented, the grade 10 ELA assessment, or earn a concordant score, in order to earn a standard high school diploma.

(b) Four credits in mathematics.—**A student must earn one credit in Algebra I and one credit in Geometry. A student’s performance on the statewide, standardized Algebra I end-of-course (EOC) assessment constitutes 30 percent of the student’s final course grade.** A student must pass the statewide, standardized Algebra I EOC assessment, or earn a comparative score, in order to earn a standard high school diploma. A student’s performance on the statewide, standardized Geometry EOC assessment constitutes 30 percent of the student’s final course grade. If the state administers a statewide, standardized Algebra II assessment, a student selecting Algebra II must take the assessment, and the student’s performance on the assessment constitutes 30 percent of the student’s final course grade. A student who earns an industry certification for which there is a statewide college credit articulation agreement approved by the State Board of Education may substitute the certification for one mathematics credit. Substitution may occur for up to two mathematics credits, except for Algebra I and Geometry. (Emphasis added)

(c) Three credits in science.—Two of the three required credits must have a laboratory component. **A student must earn one credit in Biology I and two credits in equally rigorous courses. The statewide, standardized Biology I EOC assessment constitutes 30 percent of the student’s final course grade.** A student who earns an industry certification for which there is a statewide college credit articulation agreement approved by the State Board of Education may substitute the certification for one science credit, except for Biology I. (Emphasis added)

(d) Three credits in social studies.—A student must earn one credit in United States History; one credit in World History; one-half credit in economics, which must include financial literacy; and one-half credit in United States Government. **The United States History EOC assessment constitutes 30 percent of the student’s final course grade.** (Emphasis added)

Here is more language regarding passage of the Florida Standards Assessment (AIR’s Common Core Test) in order to obtain a standard diploma from [FS. 1008.22\(3\)\(a\)](#), which also allows use of a concordant score on another exam:

In order to earn a standard high school diploma, a student who has not earned a passing score on the grade 10 Reading assessment or, upon implementation, the grade 10 ELA assessment must earn a passing score on the assessment retake **or earn a concordant score** as authorized under subsection (7). (Emphasis added)

The requirements for comparative and concordant scores are then outlined in [FS.1008.22\(7\)](#) and (8):

(7) CONCORDANT SCORES.—**The Commissioner of Education must identify scores on the SAT and ACT that if achieved satisfy the graduation requirement that a student pass the grade 10 statewide, standardized Reading assessment or, upon implementation, the grade 10 ELA assessment. The commissioner may identify concordant scores on assessments other than the SAT and ACT.** If the content or scoring procedures change for the grade 10 Reading assessment or, upon implementation, the grade 10 ELA assessment, new concordant scores must be determined. If new concordant scores are not timely adopted, the last-adopted concordant scores remain in effect until such time as new scores are adopted. The state board shall adopt concordant scores in rule. (Emphasis added)

(8) COMPARATIVE SCORES FOR END-OF-COURSE (EOC) ASSESSMENT.—**The Commissioner of Education must identify one or more comparative scores for the Algebra I EOC assessment.** If the content or scoring procedures change for the EOC assessment, new comparative scores must be determined. If new comparative scores are not timely adopted, the last-adopted comparative scores remain in effect until such time as new scores are adopted. The state board shall adopt comparative scores in rule. (Emphasis added)

So, it is clear that there is an alternative test for students to graduate and receive a standard diploma for the Reading/English assessment and the Algebra I EOC. Given that home and private schooled students take the other required courses (biology, history, geometry) and are admitted to college without these EOCs, should make it clear that either a comparative score on other exams should be identified or that a state mandated EOC is not necessary.

EFFECT ON STUDENTS – THIRD GRADE RETENTION

The same kind of deceptive omission occurs in the discussion of the consequences of the board’s decision for third grade students:

- Statutory requirements for 3rd Grade retention could not be appropriately administered because the requirement to retain a student, whose reading deficiency is not remedied, is based on performance on the statewide standardized assessment, Section [1008.25](#), Florida Statutes. Additionally, the District could not comply with the requirement of statute to provide intensive reading instruction to students in Grades K through 3 who have a substantial deficiency in reading based upon statewide assessments because there would not be evidence of performance on a statewide assessment upon which to make this determination

This memo completely omits mention of the option in statute and rule for third grade students to complete a portfolio assessment or alternative assessment in order to pass from third grade to fourth in [F.S 1008.25\(6\)\(b\)](#):

(b) The district school board may only exempt students from mandatory retention, as provided in paragraph (5)(b), for good cause. A student who is promoted to grade 4 with a good cause exemption shall be provided intensive reading instruction and intervention that include specialized diagnostic information and specific reading strategies to meet the needs of each student so promoted. The school district shall assist schools and teachers with the implementation of reading strategies for students promoted with a good cause exemption which research has shown to be successful in improving reading among students ¹who have reading difficulties. Good cause exemptions are limited to the following:

1. Limited English proficient students who have had less than 2 years of instruction in an English for Speakers of Other Languages program.
2. Students with disabilities whose individual education plan indicates that participation in the statewide assessment program is not appropriate, consistent with the requirements of s. [1008.212](#).
3. Students who demonstrate an **acceptable level of performance on an alternative standardized reading or English Language Arts assessment approved by the State Board of Education.**
4. A student who demonstrates **through a student portfolio** that he or she is performing at least at Level 2 on the statewide, standardized Reading assessment or, upon implementation, the English Language Arts assessment (Emphasis added. The details about alternative assessment and student portfolio are then outlined in [Rule 6A-1.094221](#))...

EFFECTS ON STUDENTS – LOSS OF OPPORTUNITY SCHOLARSHIPS

Fear mongering regarding opportunity scholarships is engendered in the memo this way:

- The School District could not comply with provisions of the Florida statute concerning Opportunity Scholarships, Section [1002.38](#), Florida Statutes. The statute requires that a student who attends a school which receives a school grade of an F or three (3) consecutive D's, be given an opportunity to transfer to another public school with a performance grade category of C or better. Without statewide assessments, the school grade would be “incomplete” and therefore students could not be assigned to a school with a grade of C or above.

However, with the school grade system being in such chaos with [severe questions about its validity](#) and reliability, the assessments not being counted toward school grades for at least another year and [the Florida School Boards Association](#) asking for longer, and very [few schools in Lee County meeting the qualifications](#) outlined in statute to qualify for their students to receive opportunity scholarships, a reasonable alternative could easily be developed in rule or legislation.

EFFECT ON DISTRICT PERSONNEL

Here are the scare tactics in the memo's discussion of the effects on teachers and principals:

- The School District would not be able to comply with provisions of Florida Statute concerning the evaluation of instructional personnel and school administrators. At least 50% of the performance evaluation of classroom teachers and 40% of the evaluation of school administrators is required to be based upon student learning growth assessed annually by statewide assessments, Section 1012.34, Florida Statutes. Section 1012.33, Florida Statutes, requires instructional personnel retention decisions to be based on such evaluation ratings. Additionally, Section 1012.22, Florida Statutes, requires salary adjustments for instructional personnel be based upon the results of such evaluations, which include the required component of student learning growth as evidenced by statewide assessments. It also requires provision of salary supplements to instructional personnel assigned to schools with a grade of F or three (3) consecutive D's, which could not be complied with when a school receives an "incomplete" due to the lack of participation in the statewide assessments.
- Schools would not receive school recognition dollars pursuant to Section 1008.36, Florida Statutes, which requires receipt of a school grade of an A or a one (1) letter grade improvement, to be eligible for receipt of such funds.
- The required performance base salary schedule would fail to be implemented as required. A portion of the statutorily required performance salary schedule must be based on a performance component which is based on student growth on statewide assessments. 1012.22(1)(c)5., Florida Statutes.
- School principals would be ineligible for performance pay under 1012.28, Florida Statutes, as principals are required to faithfully and effectively apply the personnel evaluation system approved pursuant to 1012.34, Florida Statutes, which includes data from student performance on statewide assessments.
- School principals would be ineligible for performance pay under 1012.28, Florida Statutes, as principals are required to assist teachers in the use of student assessment data, as measured by student learning gains pursuant to 1008.22, Florida Statutes.

COMMENT – The above discussion of alternatives allowed in statute [FS.1008.22](#) (7) and (8) and [F.S 1008.25\(6\)\(b\)](#) for students to still be assessed and the problems with the school grading system also apply to all of these concerns.

Even more importantly, according to this email from the Orange County Public Schools, if a student refuses the test, it is coded NR 2 which does not count for teacher or district accountability:

NOTE:

From: Orange County Public Schools Assessment Specialist.

Please be advised this would require verification from the DOE that this applies to all districts

The NR codes indicate that no data are reported for the student because too few questions were answered or the assessment was invalidated. An assessment marked NR2 means that the assessment experience did not meet the attempt criteria. **Students who score NR2 are not included in school or teacher accountability.** (Emphasis added).

Brandon McKelvey, Ph.D.

Senior Director

Accountability, Research and Assessment

Email: Brandon.McKelvey@ocps.net

EFFECT ON FUNDING

The other major factor being used to intimidate the Lee County board and other boards contemplating similar action, as well as to deceptively frighten the voters and taxpayers of Lee County and the state, is funding for the district. As with the effects on students, there is significant misinformation.

SPECIAL EDUCATION FUNDING - The memo's first point deals with the potential loss of Individuals with Disabilities Education Act (IDEA) funding:

- The Individuals with Disabilities Education Act (IDEA) requires that students with disabilities participate in assessments in compliance with state plans. Failure to participate in such assessments would put the District at risk of loss of IDEA funds.

Again, this memo fails to mention the good cause exemption for students with disabilities in third grade mentioned in statute and rule discussed above in F.S. 1008.25, which allows use of a portfolio or alternative assessment in general or as part of their Individualized education plan as described in [Rule 6A-1.094221](#) or the use of the alternative regular assessments with concordant or comparative scores discussed above. Here is the language related to good cause exemption for children with disabilities:

...(5) Students with disabilities who take the statewide, standardized Reading assessment or, upon implementation, the English Language Arts assessment and who have an individual education plan or a Section 504 plan that reflects that the student has received intensive remediation in reading or English Language Arts for more than 2 years but still demonstrates a deficiency and was previously retained in kindergarten, grade 1, grade 2, or grade 3.

It also fails to mention the alternative assessments and accommodations listed in [Section 6312\(a\)\(16\)](#) of IDEA:

Participation in assessments.--

“(A) In general.--All children with disabilities are included in all general State and districtwide assessment programs, including assessments described under section 1111 of the Elementary and Secondary Education Act of 1965, with appropriate accommodations and alternate assessments where necessary and as indicated in their respective individualized education programs.

“(B) Accommodation guidelines.--The State (or, in the case of a districtwide assessment, the local educational agency) has developed guidelines for the provision of appropriate accommodations.

“(C) Alternate assessments.--`

“(i) In general.--The State (or, in the case of a districtwide assessment, the local educational agency) has developed and implemented guidelines for the participation of children with disabilities in alternate assessments for those children who cannot participate in regular assessments under subparagraph (A) with accommodations as indicated in their respective individualized education programs.

“(ii) Requirements for alternate assessments.--The guidelines under clause (i) shall provide for alternate assessments that--

“(I) are aligned with the State's challenging academic content standards and challenging student academic achievement standards; and

“(II) if the State has adopted alternate academic achievement standards permitted under the regulations promulgated to carry out section 1111(b)(1) of the Elementary and Secondary Education Act of 1965, measure the achievement of children with disabilities against those standards.

“(iii) Conduct of alternate assessments.--The State conducts the alternate assessments described in this subparagraph.

NCLB TITLE I FUNDING - The memo then goes on to discuss the alleged effects on Title I of No Child Left Behind (NCLB/ESEA) funding:

Title I of the Elementary and Secondary Education Act requires that states submit a plan to seek grant funding. One component of this plan is a procedure for statewide assessment. Failure to take part in the statewide assessment, which is part of the state plan, may result in a loss of Title I funding for the School District.

The memo is correct in saying that NCLB does require participation in the statewide assessment program in [Public Law 107-110, Title I, Section 1111\(b\)\(3\)](#):

(C) REQUIREMENTS- Such assessments shall--

(i) be the same academic assessments used to measure the achievement of all children;

However, as was discussed in our policy paper, [Constitutional and Statutory Violations of Current State and Federally Mandated Student Assessment Program](#), the question becomes which parts of this massive, unconstitutional, educational equivalent of The Affordable Care Act, are the state and federal government going to follow? Here are some excerpts from the same section of NCLB that were and are definitely NOT being followed:

(a) PLANS REQUIRED-

(1) IN GENERAL- For any State desiring to receive a grant under this part, the State educational agency shall submit to the Secretary a plan, **developed by the State educational agency, in consultation with local educational agencies, teachers, principals, pupil services personnel, administrators (including administrators of programs described in other parts of this title), other staff, and parents**, that satisfies the requirements of this section and that is coordinated with other programs under this Act, the Individuals with Disabilities Education Act, the Carl D. Perkins Vocational and Technical Education Act of 1998, the Head Start Act, the Adult Education and Family Literacy Act, and the McKinney-Vento Homeless Assistance Act. (Section 1111(a)(1) – Emphasis added)

COMMENT – How many school districts, teachers, and parents did the Florida DOE consult with before submitting the massive plan committing Florida to all of the byzantine mandates of the state standards and tests?

(A) IN GENERAL- Each State plan shall demonstrate that the State educational agency, **in consultation with local educational agencies**, has implemented a set of high-quality, yearly student academic assessments that include, at a minimum, academic assessments in mathematics, reading or language arts... (Section 1111(a)(3)(A) – Emphasis added)

COMMENT – How many local educational agencies (school districts) were consulted in the choice of any of the statewide assessments being used under NCLB, especially the AIR test?

In addition, many provisions of the federal law are being negated by the illegal, unconstitutional, and conditional waivers that required either Common Core or standards deemed “college and career ready” by the state’s higher education system. These waivers were developed by Secretary Arne Duncan and are being capriciously and arbitrarily applied as evidenced by [excerpts in this letter](#) from Rep. John Kline and Senator Lamar Alexander:

“In 2011, the department began issuing waivers to states regarding specific requirements of the No Child Left Behind Act, and to date, 42 states and the District of Columbia have received ESEA waivers. In order to receive waivers, these states were required to comply with a new set of requirements, not authorized by Congress, related to standards and assessments, school accountability, and teacher and principal evaluation systems...However, Congress has little information about how the department utilizes the data required of these and other states to grant, deny, renew, or revoke a state waiver...Additionally, Congress has little insight into how states are impacted by the time and cost associated with applying for and implementing these waiver requirements...Finally, the department has recently altered various requirements for certain states regarding implementation timelines for teacher and principal evaluation systems. At the same time, other states have had their waivers put on ‘high risk’ status, and Washington recently had its waiver revoked, over issues related to teacher and principal evaluation systems. The department has provided no justifications for these seemingly contradictory decisions.”

According to the Florida Department of Education, [Florida received \\$1,512,712,755](#) (see page 8 of pdf, lines 172-178) in federal grant in aid (entitlement) monies that consist of Title I of NCLB and IDEA, as well as money from some other federal programs. We have not yet been able to obtain the figures for Lee County individually, but according to the federal law as it is currently being enforced, Lee County could not individually lose federal money if they opted out, because it is the state that receives the money and then distribute it to counties based on student population of low income and minority students., so it is disingenuous to say that Lee would individually lose its federal funds.

At some point, the Florida legislature and those across the country are going to have to decide if and when they are going to assert their relevancy and their constitutional right to control education and stop the stranglehold of crushing regulation and unfunded mandates for invasive, harmful, and ineffective programs as a significant number have done on Medicaid and the Affordable Care Act. Even Governor Rick Scott, who has not been a pillar of strength on this issue, was quoted in the Charlotte Sun Herald on August 29th as saying when asked about Lee County:

“Bureaucrats in Washington are trying to micromanage Florida’s public education system,’ he said. ‘We will see what impact it has. We are tired of having the federal government telling us what is best for our students. We have high teaching standards in Florida. Students are working hard, and we are headed in the right direction.’”

Let us hope that this statement from him and similar ones from other officials is more than political rhetoric made in the heat of an election year.

STATE FUNDING - Finally, the memo threatens loss of state education funding this way:

· [Section 1008.22](#), Florida Statutes, states “participation in the assessment program is mandatory for all school districts and all students attending public schools.”

COMMENT – If students take other tests for which there is a comparative or concordant score as stated in statute, they would still be participating in the assessment program.

Additionally, Section [1008.34](#), Florida Statutes, states; “each school must assess at least 95% of its eligible students”.

COMMENT – If students take one of the other alternative tests listed in statute and discussed above, they are being assessed. This is another requirement in the byzantine, complicated school grading system and another element that is selectively enforced like many other provisions of education law in Florida and nationally.

Section [1008.32](#), Florida Statutes, states that the Commissioner of Education may investigate allegations of non-compliance with law by school districts. If the District School Board cannot satisfactorily document compliance, the State Board of Education may order compliance within a specified time frame. If the School Board is found to be unwilling or unable to comply with law within the specified time, the State Board has the authority to initiate certain actions.

COMMENT – The quote of the referenced section of law says, “The Commissioner of Education may investigate allegations of noncompliance with law or state board rule and determine probable cause. The commissioner shall report determinations of probable cause to the State Board of Education which shall require the district school board or Florida College System institution board of trustees to document compliance with law or state board rule.” Unless the State Board of Education is as arbitrary and capricious as Secretary Duncan, if the School Board documents the compliance with the statutes allowing the alternative tests, they will show compliance.

These actions include: 1) Report to the Legislature that the School District is unwilling or unable to comply with law and recommend action be taken by the Legislature;

COMMENT – Unlike the appointed State Board of Education, the legislature must respond to many constituents, including parents, teachers, and administrators, that have grave concern with the frequency, expense, loss of instructional time, lack of academic usefulness, and emotional harm of so many mandated tests.

2) Withhold the transfer of state funds, discretionary grant funds, discretionary lottery funds or any other funds specified by the Legislature until the School District complies with the law; and 3) Declare the School District ineligible for competitive grants. In the event the School District fails to comply with the law requiring participation in statewide assessments, the State Board of Education would have authority under this statute to withhold funding and make the School District ineligible for competitive grants.

COMMENT – The State Board of Education is appointed by the governor who is up for re-election and cannot afford to alienate the voters of such a strong Republican County. If the governor loses, it is highly doubtful that Charlie Christ would appoint board members that continue to impose this quagmire of a testing system over the objections of so many teachers, a significant part of his support, and parents.

CONCLUSION - The bottom line is that there are alternative assessments available for students to take that will comply with the law and still allow diplomas, graduation, moving on to fourth grade, and teacher and administrator pay. There are also many statutory and constitutional considerations that should affect the threats of withholding state and federal funding. These assessments are invasive, resulting in massive data collection and psychological profiling of our children; creating harmful and needless stress; destructive of students' time learning; nearly useless in informing instruction; invalid in showing what a student knows; expensive; and their mandate based on academically inferior, developmentally inappropriate and psychologically manipulative standards is illegal and unconstitutional. The powers that be should be ashamed for this continued deception and fear mongering, especially, when the state and federal mandates for both tests and standards stand in violation of so [many state and federal constitutional provisions as it is](#). The Lee County board needs to stand strong. And every other school board in Florida and across the nation needs to join them by asserting their rights; protecting their students, teachers, administrators, and parents; and safeguarding the funds of the taxpayers in their districts by fanning the grassfires of liberty and throwing off the chains of tyranny. It is hoped that state and federal legislators will do what is right and remove these unconstitutional state and federal mandates.

DISCLAIMER – This paper is meant to serve as a policy analysis of the tactics being used to try to stop parents and citizens via their duly elected school boards from exercising their inalienable and constitutional rights to direct the education and upbringing of their children and local decision-making via elected representatives. It is not intended to serve as legal advice.

UPDATED 9/9/14 to clarify information about end of course assessments