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TO: Barbara Madeloni, MTA President
Janet Anderson, MTA Vice President
Ann Clarke, Executive Director-Treasurer

FROM: Ira Fader, MTA General Counsel 

RE: 2015 PARCC Diagnostic Field Test "Security Agreement"

I understand that MTA field representatives and/or local leaders have expressed concern that teachers have been asked by school administrators to sign a document entitled "Security Agreement" that is part of the Test Administrator Manual for the 2015 PARCC Diagnostic Field Test. I now have a copy of a 2015 Test Administrator Manual and a 2015 Test Administrator Manual for the PARCC Diagnostic Field Test. The latter includes a "Security Agreement" for test coordinators, technology coordinators, test administrators, and proctors. Any of these roles are likely to be filled by members of the bargaining unit represented by our local affiliates.

The question is whether teachers should sign the Security Agreement, either voluntarily or under direct mandate by the school administration. In reviewing both the Manual and the Security Agreement, I can see multiple issues that should be made the proper subject of bargaining before teachers sign the agreement. My understanding is that teachers are simply being asked or instructed to sign, although the school employer has not first provided the local association with prior notice of the documents or the request that they be signed.

First, the "Security Agreement" raises significant questions. It is not clear, for example, who the parties to the "agreement" are. The agreement says that it must be maintained by the test coordinator for at least three years, but the school district as a governmental entity does not appear anywhere on the document. Nor does the agreement provide any basis for believing that the school district has adopted the agreement or the promises contained therein as school personnel policy. Likewise, the agreement contains no reference to the Department of Elementary and Secondary Education or its regulatory requirements, and accordingly it is

unclear to what degree, if any, the agreement is a requirement of state law. Employees should not be entering into agreements with entities outside their employment relationship. Signatories are asked to make numerous promises, although it is unclear to whom the resulting obligations are owed. Clarity in this area is essential to an understanding of the educators' legal rights.

Moreover, even a cursory glance at the documents reveals the possibility of impacts on terms and conditions of employment that are mandated subjects of bargaining. It is well established that mandatory districtwide policies that are distributed to teachers and that have an impact on bargainable subjects (such as sexual harassment policies or acceptable use policies) implicate G.L. c. 150E's bargaining duty. Here, the Security Agreement warns of disciplinary consequences for failure to abide by the terms of the agreement, including employment sanctions and licensure consequences. Such effects are widely recognized as triggering a bargaining duty over the policy or work rules in question. Moreover, a review of the Manual reveals multiple ways in which a teacher's already strained workload would be increased through training and other obligations. The extent to which these obligations compared to current MCAS obligations is an area that any local association is entitled to explore with the employer before individual educators are asked to sign the document and its attendant promises.

The agreement's confidentiality requirements arguably touch upon contractual or constitutional rights. The prohibition against discussing "test content" may overbroadly intrude upon the First Amendment right of teachers to discuss their views on matters of public concern. An educator may feel, for example, that the content of the English Language Arts/Literacy test for third graders is age-inappropriate, but that educator might also feel constrained by promises made in the Security Agreement from expressing this otherwise constitutionally protected opinion.

I am aware that DESE has previously provided a security agreement to school districts for MCAS administration, and PARCC also offered security agreements last year. However, they were not the same as the Security Agreement that has surfaced now. The MTA is unaware of whether and how the agreements were used in individual school districts, but unless a signature is required by state law, what has happened in one district has no bearing on the bargaining obligations in another district. It is critical that teacher unions be afforded the opportunity to examine and negotiate over the Security Agreements for this round of PARCC administration *before* teachers are asked to sign them.

School districts should not be dropping these materials into teachers' mailboxes or distributing them in classrooms without first involving the local association representing those teachers. If that is happening, the association can demand to bargain and ask that the employer take no action with respect to these documents until the parties have negotiated a clearer understanding of its contents and its impacts on employment conditions and other legal rights.

If teachers are asked by the school administration to sign the document, they should decline to do so until local bargaining has been undertaken and completed. If they are directed by the administration to sign the document under threat of sanction, they should sign with a statement indicating that they have received the document but do not enter into the promises it entails.

Please do not hesitate to contact me with further questions.