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OPTING OUT OF STATE TESTING: INFORMATION FOR PARENTS AND STUDENTS

We here at FairTest are constantly getting calls from parents from around the country about the status of and mechanism for exercising their “right” to opt their children out from taking mandated standardized testing imposed by the state, or in some cases, the local district. The short answer to the opt-out question is it all depends on the state in which you reside, as different states have different policies regarding the possibility of opting out and the consequences for doing so.

This FairTest FACT SHEET will help explain Opt Out policies and procedures and how they vary from state to state and even across districts within states.

The Tension Between Participation Rates and Parent Opt Outs

A principal reason for the disparities and confusion across states and districts regarding testing opt outs is the tension inherent in federal education law (the Every Student Succeeds Act) on the subject. At the same time the law requires a 95% student participation rate on federally required tests, it also contemplates parents having a right to opt their children out of the tests.

Federal law requires that states maintain and enact measures to maintain a 95% participation rate on accountability tests required by ESSA. As a result all states address the 95% participation requirement in their state accountability and assessment plans.

The law also states that:

“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.” (Section 1111(b)(2)(K) of ESSA)

Section 1112(e)(2) of ESSA further states that:

“At the beginning of each school year . . . 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

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local educational agency, **which shall include a policy, procedure, or parental right to opt the child out of such assessment, where applicable.**”

Not surprisingly, states and districts have exhibited schizophrenia on the question of allowing individuals to opt out of mandated tests. There is wide variation across states in the percentage of students whose parents opt them out of the assessments, and many states have developed opt-out policies in response.

Opting Out By State¹

The states can be placed into four categories regarding testing opt-out policies and procedures:

1. **Opt outs expressly prohibited by the State (13)**

The states with a policy denying parents the ability to opt out from a statewide exam are:

AZ, AR, IA, IL, KY, MI, NM, NC, OK, RI, TN, TX, WY

In those states, students who absent themselves without cause (illness, etc.) will have some consequence to their decision, usually enforced at the district level. Parents and students should investigate those consequences, which will undoubtedly vary from district to district, for opting out of a mandated standardized exam.

1(a). **Prohibition with a specific exception (2)**

Indiana. Opt outs are prohibited but students with certain disabilities can file for an opt out waiver.

Pennsylvania. A religious exemption is available to the opt out prohibition.

¹ For a collection and analysis of opt out policies and participation rate calculation and policies in state ESSA plans, see Quanbeck, M., Lazarus, S. S., & Hinkle, A. R. (2024). Two pieces of a puzzle: The 95% participation requirement in state plans and states' opt-out policies (NCEO Report 443). National Center on Educational Outcomes.

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2. **Opt outs expressly permitted by the State (13)**

In these states, parents have the right to opt students out of mandated statewide exams:

AK, CA, CO, MA, ME, MN, MS, NH, ND, OR, UT, WV, WI

Three of those states, CA, CO and ME, have provisions requiring parents to be informed of their opt-out rights.

In these states it is still up to the parents to figure out the procedure of the local district through which they can exercise their choice to opt out from the exams.

3. **State Policy Vague—Neither Prohibits Nor Authorizes Opt Outs (11)**

AL, CT, (several districts, e.g. New Haven allow for opt out), DC, HI, MD, MT, NY, OH, VA, VT, WA.

Parents wishing to opt out in these states should push the case with their local school and district. Nothing in state law prohibits the practice.

The Consequences of a Low Participation Rate

States' opt-out policies are very much tied to how they calculate and view the issue of the required 95% testing participation rate under federal law. Assessment opt-out continues to present challenges to states in regard to meeting the 95% participation requirement, and state-level opt-out policies may impact participation rates.

Still, according to the NCOE Report, although all 50 states plus the District of Columbia addressed the 95% participation requirement in their state ESSA plans, only 28 states included consequences of failing to meet the requirement. The most common

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consequences included requiring the development of an improvement plan², penalties such as dropping a grade level in the accountability system, and monitoring or audits conducted by the state. Ten states also indicated that consequences would escalate over multiple years for districts or schools that continued to not meet the participation requirement.

Parents wishing to opt students out of exams and who seek to organize other parents in doing so should inquire and research the specific consequences imposed by the state or locality for failure to meet the 95% participation threshold. It may be that there is no particular consequence being imposed for the locality or state for failing to meet the participation threshold which strengthens the case for permitting an opt-out decision.

² The level of detail in describing the improvement plan varied widely across states. The most common components required in improvement plans included:

(1) strategies and future steps to be taken to increase participation rates, (2) information about increasing the involvement and engagement of parents or the community related to assessment participation, (3) identification of reasons for low participation rates, (4) documentation of past efforts to improve participation rates, and (5) stakeholder involvement in developing the improvement plans.