

Opting Out of Standardized Tests

FAQs on Your Legal Rights as a Public Educator

1. What do I need to know about the changes in opt out based on HB 2655 (2015)?

a. Parents, legal guardians, and students 18 years of age and older can opt out of statewide summative assessments for any reason. Note: Statewide summative assessments are defined as statewide assessments used to meet both participation and performance requirements for state and federal system accountability (OAR 581-022-1910).

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b. School districts and public charter schools must notify parents and adult students at least 30 days before administering a statewide summative assessment. The notice must include: 1) purpose of the assessment and how it will be used; 2) when the assessment will be given; 3) amount of class time required; 4) learning targets; 5) difference between levels of performance; 6) when assessment results are available; and 7) access to the form to excuse a student from taking the statewide summative assessment.

2. Will my school lose money, face sanctions, or be negatively impacted if too many parents opt out?

a. The new Every Child Succeeds Act (ESSA) requires that a state test 95% of students, but federal consequences have been eliminated. Instead the state must determine how the 95% participation rate is part of the state accountability system.

3. Will my students' test scores be a part of my evaluation in the 2016-17 school year?

a. Use of test scores in educator evaluation are no longer required in the new federal ESSA law. Use of test scores does exist in Oregon Administrative Rule. (OAR 581-022-1723). A work group is being formed to review the existing OAR and recommend changes.

4. Are my students at risk of not graduating if they/their parents/guardians opt out of the new assessments?

a. No. As long as your student has demonstrated proficiency in the Essential Skills required for high school graduation by successfully completing one of the other approved assessment options for meeting the Essential Skills.

5. Can I support or promote opt out during working hours? If yes, how?

a. Yes... with limitations. You can promote student and parent rights to opt out with colleagues during break periods or lunch periods (when colleagues are also on a break period). Your free speech rights during working hours are limited, however. If your school district determines that your "speech" is disruptive to district policy or the educational process you will be subject to discipline up to and including dismissal.

b. If a parent/guardian or student asks you about opt out you can provide information about the right to do so, and the state and district process for doing so. Parents do not need to give a reason to opt out- under the provisions of HB 2655 - Oregon's new law effective 1/1/2016.

c. If a student asks you about opt out, your safest course of action is to direct them to on-line resources and ask them to have their parent/guardian contact you or the school district. Be mindful about unduly influencing a minor.

6. Can I encourage parents/guardians to pursue opt out for their children during working hours? During non-working hours?

a. There is not an easy "yes" or "no" answer to the first

question. The Oregon Department of Education and all school districts require standardized testing. HB 2655 (2015) requires school districts provide information about the purpose of testing and the right to opt out. You can encourage parents to become informed about testing and their rights.

b. You can encourage parents/guardians, during nonworking hours, to pursue opt out as allowed by state law.

7. Can I support and promote the right of parents and students to opt out of standardized tests?

a. Yes, keeping in mind restrictions during working hours. Parents, legal guardians, and students 18 years of age and older can opt out of statewide summative assessments for any reason and you can support and promote their right to do so. Statewide summative assessments are defined as statewide assessments used to meet both participation and performance requirements for state and federal system accountability (OAR 581-022-1910).

8. Can I speak out publicly in support of opt out?

a. Yes. You have a free speech right to speak out publicly in support of opt out.

b. You have a right to speak out as an individual during NON-WORK hours in public forums such as school board meetings, organized rallies, sporting events, directly to the media, and other forums.

9. Can I be disciplined for talking about opt out with my parents?

a. The answer is “yes” if doing so during working hours in a way that is disruptive to normal classroom instruction or duties; and “no” in most cases when talking to parents during nonworking hours; but, it depends upon the circumstances in each situation. There are much greater limitations on free speech rights during working hours.

10. Can I have opt out forms in my classroom and distribute these forms to parents/guardians?

a. The answer is yes once the Oregon Department of Education produces the forms required by HB 2655 unless the district prohibits distribution in the classroom.

11. What are the consequences if I choose/refuse to administer standardized tests?

a. You will be subject to discipline up to and including dismissal unless it involves a student whose parents or guardians have opted out and the district has given you notice of the opt out. It has long been school district policy and a job duty of school employees to administer standardized tests. Refusing to administer these tests would be considered a violation of district policy and insubordination. Based upon current law and school district policies regarding testing, school employees should NOT refuse to administer standardized tests without knowing and understanding the consequences.

12. What if I believe that a test is particularly stressful to a student or group of students?

a. Do not change or modify the testing protocols. School employees, including school administrators, have been disciplined and/or dismissed for changing test protocols or offering assistance to students involved in standardized tests.

13. Can my principal get into trouble if too many parents opt out?

a. No. Parents have a legal right to opt out their student.