



Opting Out of Standardized Tests

Many parents, and even many educators, are dismayed by the frequency and emphasis on standardized tests in public schools. When the No Child Left Behind Act (NCLB) was signed into law in 2002, every state prescribed standardized testing to comply with state plan requirements. School districts' accountability ratings and reputations became intertwined with standardized test scores. Many felt the emphasis on test scores resulted in an increase in the stress on students, teachers, and administrators and a “teach to the test environment.”

When NCLB was replaced by the Every Student Succeeds Act (ESSA) in December of 2015, the new law gave states some leeway in how students were assessed and how assessment would factor into school accountability. However, school accountability is still tied to academic achievement, and Texas, by virtue of its current accountability system, still measures academic success on summative standardized exams.

In Texas, parents who object to standardized testing are publicly discussing the idea of “opting out,” either by keeping their children at home on test dates or by permitting them to abstain from testing. These parents have the right to express their opinions, of course. For example, they might file a grievance at the local level, or even better, express their points of view to state and federal lawmakers who have the power to change testing requirements. However, actually “opting out” is not as easy as it sounds, and there are serious consequences parents should consider.

School officials are tasked with the application of state rules on opting out, but engaging parents in a more personal dialogue can be an effective compliance tool. The questions and answers below give an overview of the practice of opting out.

1. What standardized tests are required in Texas public schools?

Standardized testing is required in Texas public schools by the State of Texas Assessments of Academic Readiness, or “STAAR,” program set out in Texas Education Code chapter 39 and 19 Texas Administrative Code chapter 101. The Texas Education Agency (TEA) publishes detailed information about STAAR testing at: tea.state.tx.us/student.assessment/staar/.

Testing in Grades 3-8: Unless exempt, all students in grades 3-8 take the following STAAR tests:

- Math, annually in grades 3 through 8;
- Reading, annually in grades 3 through 8;

- Writing, including spelling and grammar, in grades 4 and 7;
- Social studies in grade 8;
- Science in grades 5 and 8; and
- Any other subject and grade required by federal law.

Tex. Educ. Code § 39.023(a).

High School End-of-Course Exams: Students must pass five end-of-course (EOC) exams in order to graduate: Algebra I, Biology, English I (including reading and writing in a single exam), English II (including reading and writing in a single exam), and U.S. History. In some instances, performance on an AP, IB, ACT, SAT, PSAT, ACT-Plan, or TSI assessment can be used to satisfy EOC requirements. For more information about EOC substitute assessments, see the Substitute Assessments Standards Chart available at ritter.tea.state.tx.us/rules/tac/chapter101/19_0101_4002-1.pdf.

Benchmark Testing: A “benchmark” test is a locally-required assessment instrument designed to prepare students for a corresponding state-administered assessment instrument. A school district may not administer more than two benchmark tests to prepare students for the related state-administered assessment. Tex. Educ. Code § 39.0263. In addition, a district may not administer locally-required benchmark tests on more than ten percent of the instructional days in any school year. District campus-level planning and decision-making committees may limit the percentage of instructional days available for benchmark testing to ten percent or less. Tex. Educ. Code § 39.0262.

2. What does federal law say about opting out?

ESSA, like its predecessor, NCLB, requires districts measure the achievement of at least 95 percent of all students. In March of 2017, Congress overturned the federal regulations that would have required states take action to improve the schools’ participation if they fell below 95 percent. Technically, however, schools are still required to test 95 percent of their students and schools that drop below the 95 percent could face consequences from the state. 20 U.S.C. § 6312(c)(4)(e).

Contrary to statements on some anti-testing websites, ESSA does not include a federal right to opt out of standardized assessments. These websites are likely referring to a provision in ESSA that requires districts to provide information to parents regarding the assessment, which may include, “where applicable,” the district’s opt-out policy. Because, as described below, an opt-out policy is not applicable in Texas, school districts in Texas do not need to provide parents with information on an opt-out policy. Districts must, however, provide parents with information regarding their children’s participation in the assessment. 20 U.S.C. § 6312(e)(2).

3. Is there a right to “opt out” of standardized tests in Texas public schools?

No, in fact just the opposite. State law makes it clear that students may not opt out of standardized or any other tests. Texas Education Code section 26.010 states:

EXEMPTION FROM INSTRUCTION. (a) A parent is entitled to remove the parent’s child temporarily from a class or other school activity that conflicts with the parent's religious or moral beliefs if the parent presents or delivers to the teacher of the parent’s child a written statement authorizing the removal of the child from the class or other school activity. **A parent is not entitled to remove the parent’s child from a class or other school activity to avoid a test** or to prevent the child from taking a subject for an entire semester.

(b) **This section does not exempt a child from satisfying grade level or graduation requirements in a manner acceptable to the school district and the agency.** (emphasis added)

4. What are the consequences of missing school on a testing date?

Makeup Tests: First, it is important to note that missing school on a single designated test date will not necessarily cause a student to miss his or her testing opportunity. Although districts publish a schedule of specific test dates for STAAR, most tests are administered within a testing “window” set by TEA. If a student who has been absent returns to school during the testing window, he or she may be asked to sit for the exam at that time. Makeup test dates are also scheduled (beyond the window) for most assessments.

Compulsory Attendance: Depending on the circumstances, a student may be subject to truancy prevention measures and a parent may commit the offense of contributing to nonattendance, if the student fails to attend school on 10 or more days or parts of days within a six-month period in the same school year or on three or more days or parts of days within a four-week period. Tex. Educ. Code § 25.093; Tex. Fam. Code § 65.003.

By law, a school district is required to notify a student’s parent and seek a conference if the student has been absent from school without excuse on three days or parts of days within a four-week period.

The notice must inform the parent of the following:

- It is the parent’s duty to monitor the student’s school attendance and require the student to attend school, and
- The student is subject to truancy prevention measures.

Tex. Educ. Code § 25.095.

Like the state testing requirements, notice and enforcement of attendance laws are not optional for school districts.

Attendance for Credit: Failure to attend on a test date or during a testing window would also be taken into consideration for the purposes of the 90 percent attendance rule. A student in any grade K-12 may not receive credit or a final grade if the student attends class less than 90 percent of the days the class is offered, absent extenuating circumstances as determined by a local attendance committee or, in some cases, the campus principal in accordance with board policy. Tex. Educ. Code § 25.092.

5. What about being present but not testing?

All eligible students present at school on a test date must be included in the test administration. Campus officials must return a test booklet for every student, in accordance with TEA test administration guidelines.

Questions have arisen about whether a campus could allow a student who is present at school, but whose parent has indicated a desire to “opt out” of the test, to go to a supervised location other than the testing site to complete other schoolwork. A district considering offering this option should consult with its school attorney. At a minimum, the district should clarify for parents that waiting in an alternative location is not truly “opting out.” A booklet with a zero score must be submitted on behalf of the student, which might result in academic consequences for the student. In addition, the campus is obligated to maintain a secure test environment throughout the test administration in accordance with TEA test security requirements. Test security requirements may limit alternative locations or activities for students not taking the test.

6. What if a parent chooses to withdraw a child before a testing window with the intent of re-enrolling afterwards?

A parent who is withdrawing a child from enrollment is not seeking a temporary absence to avoid testing; instead, they are withdrawing from enrollment entirely. Even if the school district suspects that the parent is likely to reenroll, the district has no grounds to refuse to withdraw the child.

7. What is the consequence to a student for not completing standardized tests?

Promotion to the Next Grade: Grade advancement procedures are established by the Texas Education Code, regulations in 19 Texas Administrative Code chapter 101, and the *Student Success Initiative Manual* published at: tea.texas.gov/student.assessment/ssi/. Even when a student’s performance on a state assessment is not directly tied to grade promotion as described below, a student’s score on an applicable state assessment must be considered as a factor in promotion. Tex. Educ. Code 28.021(c).

Promotion from Grades 5 and 8: In addition to local policy standards relating to grade advancement, students in grades 5 and 8 must pass the math and reading portions of the STAAR to be promoted. School districts are required to administer three testing opportunities for students who fail to meet satisfactory performance on these assessments. A student who does not pass the tests may advance to the next grade only if:

- the student has completed required accelerated instruction (tutoring); and
- the student's grade placement committee, established at the student's campus, determines by unanimous decision, in accordance with the standards for promotion established by the school board, that the student is likely to perform at grade level at the end of the next year.

19 Tex. Admin. Code § 101.2001(b), .2005.

High School Graduation: Students must pass the five end-of-course exams or an acceptable substitute in order to graduate, as described above. A student who does not perform satisfactorily on the STAAR test in no more than two courses may be permitted to graduate if an individual graduation committee determines the student is qualified to do so. Although this section of the Texas Education Code is set to expire in September 2017, various bills have been proposed in the 85th Legislative Session that would repeal the expiration date and allow districts to continue to use individual graduation committees for this purpose. By local policy, a school district may also issue a certificate of coursework completion to a student who successfully completes curriculum requirements but who fails required state assessment tests. Tex. Educ. Code § 28.025(d), .0258; 19 Tex. Admin. Code § 101.3022

8. So what can a school district do to address the problems that are associated with opting out of standardized testing?

A student's refusal to participate in required testing affects the campus's accountability ratings by lowering the school's participation and passing rates. When a campus's accountability ratings go down, the entire community is affected.

Although pressuring a parent is usually unproductive, the school may be able to initiate discussion to address parental concerns. Stress-related concerns can sometimes be addressed by allowable accommodations, working with a counselor, or training teachers to provide stress reduction in the classroom. Ideally, districts and parents can partner to address concerns.

ESSA was passed, in part, to address the bipartisan consensus that federal accountability under NCLB overly emphasized standardized assessment. Although ESSA de-emphasized assessments and enhanced the statute's flexibility, Texas continues to use standardized assessments in the state accountability system. In Texas, districts and campuses are tasked

with working with parents to relieve the tension of standardized assessment while providing full and accurate accountability.

If you are a school official with additional questions, please contact your school attorney or TASB Legal Services for further information. An article discussing opting out of standardized testing in a national context is available in the June 2017 edition of the National School Board Association's American School Board Journal at nsba.org/newsroom/american-school-board-journal.

This document is provided for educational purposes only and contains information to facilitate a general understanding of the law. It is neither an exhaustive treatment of the law on this subject nor is it intended to substitute for the advice of an attorney. It is important for the recipient to consult with the district's own attorney in order to apply these legal principles to specific fact situations.

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