



## Opting-Out of Testing is NOT an Option in Kentucky

In Kentucky, districts are not permitted to honor a parent’s request to opt-out of statewide testing.<sup>1</sup> Although parents have the right to opt their children out of public education by choosing home school or private school, parents do **NOT** have the right to pick and choose the provisions of public education with which they will comply. The Every Student Succeeds Act (ESSA) requires 95% participation of all students and each student group in the federally mandated state assessments. If fewer than 95% of students participate federal funding and waivers could be jeopardized. Testing all students allows us to identify trends for student groups that may otherwise go unseen. This provides educators the information needed to ensure all students’ educational needs are being met. Based on the data from our state assessments, we can identify the disparity in performance between groups and work toward closing achievement gaps.

In seeking to opt out, parents often cite the 14<sup>th</sup> Amendment to the United States Constitution, *Meyer v. Nebraska*<sup>2</sup>, and *Pierce v. Society of Sisters*<sup>3</sup> as authority to opt-out of standards and statewide testing. **However, there is no authority in state or federal law allowing parents to opt-out of the Kentucky Academic Standards (KAS) or statewide assessment system.** The *Meyer* and *Pierce* cases were decided by the United State Supreme Court in 1923 and 1925, respectively, and neither case stands for the proposition that parents are afforded the right to opt-out their children from state curriculum standards or statewide assessment tests. Finally, pursuant to 34 CFR Part 99, FERPA does not prohibit transmission of testing data from the local school to the Kentucky Department of Education.

**On the other hand, there is abundant legal authority supporting KAS and mandatory statewide assessment.** In 1997, the Kentucky Court of Appeals affirmed the Kentucky Board of Education’s authority to require all students in public schools in our state to participate in standardized assessments.<sup>4</sup> Regarding KAS, Senate Bill 1 (2009), which was overwhelmingly supported by a bi-partisan majority of the Kentucky House and Senate, mandated common standards. Senate Bill 1 (2017) reaffirmed the requirement of common standards for the purpose of increasing transition readiness. Under its authority, the Kentucky Board of Education adopted the KAS in reading/writing, mathematics, health education, physical education, as well as current science standards. As these standards are included in regulation, the expectation is that all students are provided instruction and opportunity to learn these standards in the public schools.

As described on KDE’s [website](#), Kentucky’s statewide accountability system depends on the testing of every student. The purpose of testing every student is to ensure that all schools and districts are serving all students and that gaps in categories of students are identified, addressed, and closed. Kentucky statute [KRS 158.6453](#) and Kentucky regulation [703 KAR 5:240](#) were promulgated to ensure the system and the data produced were faithful to these goals. An accountability model must be all-inclusive and all-reflective.

<sup>1</sup> Students may only be excused from statewide assessments upon completion and approval of the Medical Nonparticipation Form. Both forms can be found at: <http://education.ky.gov/AA/distsupp/Pages/Forms.aspx>

<sup>2</sup> 262 U.S. 390 (1923).

<sup>3</sup> 45 S.Ct. 571 (1925).

<sup>4</sup> *Triplett v. Livingston County Board of Education*, 967 S.W.2d 25 (Ky. App. 1997)

Districts should be prepared to explain these requirements to parents, as well as the importance of the consistency of academic standards throughout all Kentucky schools as a part of the “efficient system of common schools” required by Section 183 of the Kentucky Constitution, and as more specifically described in the landmark case of *Rose vs. Council for Better Education* (Ky. Supreme Court, 1990).

**Students who do not participate in the statewide accountability system will receive a “0” score which will be included in the school’s accountability calculation.** Districts are encouraged to review their policies and communicate to parents the consequences for students’ failure to participate in mandatory state assessments.

**Questions:**

If you have any additional questions, please contact the Office of Assessment and Accountability at [dacinfo@education.ky.gov](mailto:dacinfo@education.ky.gov).