

FACT SHEET: OPTING-OUT OF STANDARDIZED TESTS

March 2014

DOES PENNSYLVANIA ALLOW PARENTS TO OPT THEIR CHILDREN OUT OF THE PSSAs AND KEYSTONE EXAMS?

Yes, Pennsylvania allows parents to opt their children out of standardized testing for religious reasons. First, a parent or guardian must contact the school and ask to review the assessment. The review must take place at the school, but the school must have a policy that allows review during convenient hours for the parent or guardian. This includes evening hours.

If after the inspection the parent or guardian determines that the exam conflicts with their religious beliefs they may opt their child out of the assessment. The proper procedure is for the parent or guardian to make a written request to the school district superintendent that states the objection. This request **will not be denied** by the school.¹

DOES PENNSYLVANIA ALLOW PARENTS TO OPT THEIR CHILDREN OUT OF STANDARDIZED TEST PREPARATION AS WELL?

The answer to this question is not as clear, but it is likely true that a parent or guardian may opt their children out of the test preparation for the PSSAs and Keystone Exams. Pennsylvania allows parents and guardians to remove their children from any instruction that conflicts with their religious beliefs. This would likely include test preparation. In order to excuse their children from the objected instruction the parent or guardian must make a written request to the school.²

¹ See 22 PA Code § 4.4(d)(4), available at <http://www.pabulletin.com/secure/data/vol44/44-9/434.html>. Please note, do not look for the Chapter 4 Regulations on [pacode.com](http://www.pacode.com) until at least May 1st, 2014. The Chapter 4 Regulations were updated on March 1st, 2014 but the PA Code's website will not be updated until at least May.

² See 22 PA Code § 4.4(d)(3), available at <http://www.pabulletin.com/secure/data/vol44/44-9/434.html>.

DO I NEED TO BE RELIGIOUS TO OPT-OUT MY CHILD?

The regulation allowing the opt-out very clearly states that the exam must conflict with the parent's or guardian's religious belief in order to justify an opt-out. However, "religious" under the First Amendment does not solely mean traditional organized religions. A belief is religious if it occupies the place in a person's life where traditional religion is held. These beliefs typically concern ultimate ideas about life, purpose and death. Political, social, and economic beliefs as well as personal preferences and personal moral codes are not religious.³

CAN MY SCHOOL DENY MY OPT-OUT REQUEST?

A school cannot deny an opt-out request. As long as, following review of the assessments, a parent provides the written notification to the school district that states their objection, it must be granted.

CAN MY CHILD STILL GRADUATE IF HE OR SHE IS OPTED-OUT OF THE KEYSTONE EXAMS?

A demonstration of proficiency in the Keystone Exams is a graduation requirement starting with students graduating in school year 2016-2017. However, if a child is opted-out of the Keystone Exam he or she may still graduate if they complete a Project-Based Assessment or a waiver is granted by the school districts Chief School Administrator.

A Project-Based Assessment is a system designed by the Pennsylvania Department of Education which is used to determine proficiency in the Keystone subjects for those who are unable to pass the keystones or opted-out of the exam by their parents or guardians. The Project-Based Assessment is administered by schools and scored by Statewide panels composed of teachers, principals, and curriculum specialists assembled by the Pennsylvania Department of Education. The student's project will be scored according to protocols and rubrics developed by the Pennsylvania Department of Education.⁴

Finally, each school district's "Chief School Administrator" (in the case of a school district, the superintendent) has the sole discretion to waive high school graduation requirements on a case-by-case basis for good cause. These waivers may be granted to students who do not complete a Project-Based Assessment. Waivers may also be granted to

³ See e.g. *US v. Seegar*, 380 US 163 (1965); Equal Opportunity Commission, *EEOC Compliance Manual*, Section 12: Religious Discrimination, available at <http://www.eeoc.gov/policy/docs/religion.html>.

⁴ See 22 PA Code §§ 4.24(c)(iii)(A); see 4.51C(b), available at <http://www.pabulletin.com/secure/data/vol44/44-9/434.html>.

students experiencing extenuating circumstances such as serious illness, death in immediate family or family emergency. However, the waiver process does not confer a right to any individual student, nor is a waiver determination considered an adjudication.⁵

WILL OPTING OUT EFFECT MY CHILD'S CHANCES OF BEING GRANTED ADMISSION TO ONE OF PHILADELPHIA'S SPECIAL ADMISSION HIGH SCHOOLS?

The answer to this question is unclear. The School District of Philadelphia does not have a specific policy for Special Admission High School (SAHS) applications submitted without PSSA scores. This is likely due to opting-out being a relatively rare practice. After discussions with the school district, the likely outcome would be the SAHS will still consider the application and examine what is provided. However, the SAHS will still likely ask for the student to undergo some sort of evaluation. Each SAHS is free to make their own decision on substitutes for PSSA scores. For more information on this matter, please contact the SAHS you are considering having your child apply to.⁶

ARE THERE ANY NEGATIVE CONSEQUENCES FOR MY TEACHERS OR SCHOOLS IF I OPT-OUT MY CHILD?

Act 82 of 2012 mandated performance reviews for teachers. In addition to teacher observations, building level data, and elective data, performance on the PSSAs and Keystone Exams is a component of these reviews. However, the exam results may only account for 5% of a teacher's ranking.⁷

Opting your child out of the Keystone Exams or PSSAs will not result in your school receiving less funds. Federal law does not prohibit opting-out, but No Child Left Behind (NCLB) contained a provision that if fewer than 95% of students take the test the school cannot make "Adequate Yearly Progress" (AYP). However, Pennsylvania schools are no longer subject to that requirement because Pennsylvania applied for and was granted a NCLB waiver that exempts them from AYP.⁸

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⁵ See 22 PA Code § 4.51c, available at <http://www.pabulletin.com/secure/data/vol44/44-9/434.html>.

⁶ Telephone Conversations with School District of Philadelphia.

⁷ See 22 PA Code § 19.(IV)(4)(b)(2)(ii), available at <http://www.pacode.com/secure/data/022/chapter19/chap19toc.html>.

⁸ *Overview of Pennsylvania's Approved No Child Left Behind Waiver*, Pennsylvania Department of Education, available at, http://www.portal.state.pa.us/portal/http://www.portal.state.pa.us:80/portal/server.pt/gateway/PTARGS_0_148494_1359415_0_0_18/082013%20NCLB%20Waiver%20Overview.pdf.

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IMPORTANT: ELC's publications provide a general idea of the law. However, each situation is different. If questions remain about how the law applies to a particular situation, contact us for a referral or contact an attorney of your choice.