



MEIGS LOCAL SCHOOL DISTRICT  
41765 POMEROY PIKE, POMEROY, OH 45769

**MEMORANDUM**

**To: Parents/Guardians of Meigs Local School District**

**From: Rusty Bookman, Superintendent**

**Re: Parent Opt-Out Requests**

**Date: February 23, 2015**

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*Dear Parent/Guardian,*

*There have been many questions asked about new state testing and PARCC exams. The choice to encourage or discourage the testing process upon our students is not the goal of Meigs Local. In addition, it is not our objective to challenge the laws of our governing bodies for what they have placed upon us.*

*Respectfully, I am quite confident our own Local Board of Education can make more solid and sound educational decisions on what is best for our students and families based on educator feedback, than the political representatives in Columbus. In addition, I will continue to respect the decisions made by all our parents, as well as the governing policy put forth by legislation and the Ohio Department of Education regarding testing. Below is legal guidance we can provide for each parent/guardian regarding the ODE testing procedures. Feel free to contact myself or the local building principals if you have questions.*

**I. Ohio Law Regarding Student Testing**

By way of background, Ohio is one of 45 states that have fully adopted the Common Core academic standards. Ohio school districts were required to implement the Common Core academic standards last school year. All the states that adopted the Common Core have also revamped their state testing systems. There are two groups that developed the new Common Core tests: the Smarter Balanced Assessment Consortium (SBAC) and the Partnership for Assessment of Readiness for College and Careers (PARCC). Ohio is among 13 states that have worked as part of the PARCC consortium, which developed a common set of K-12 academic assessments for English Language Arts and Mathematics.

The statutory mandate to adopt statewide academic content standards (*i.e.*, the “Common Core”) is set forth in R.C. 3301.079. Accordingly, there exists today within the State of Ohio, a uniform set of academic standards adopted by the State Board of Education based on the

Common Core academic standards. Under R.C. 3301.079, these standards are required to specify the academic content and skills that students are expected to know and be able to do at each grade level.

Additionally, every public school district in Ohio is required to administer a number of statewide standardized tests developed by the State Board. R.C. 3301.0715. These tests are designed to measure student comprehension of academic content and the mastery of related skills. A complete list of the required statewide standardized tests may be found in Ohio Administrative Code (“OAC”) 3301-13-01(D).

While every school district has discretion over what curricula it ultimately adopts (*see* R.C. 3313.60), because the statewide achievement tests are aligned with the state’s model curricula, there is a strong incentive for school districts to adopt the “Common Core” academic standards. The District would have no obligation to provide different curriculum or lesson plans for a student who opts out of the District’s curriculum based on the Common Core. Likewise, the District *would have no duty to provide alternative instruction on testing days if a student opts out*. However, depending on the circumstances, the District could consider doing so to avoid a conflict with parents. Further, depending on board policy, the student may receive an unexcused absence on a testing day if a parent keeps his or her child home that day.

## **II. Ohio Law Regarding Opting Out and Parental Rights**

With respect to opting out of the associated state mandated assessments in Ohio, OAC 3301-13-02(B) provides in relevant part:

*Annually, all students shall be required to take all tests appropriate for their specified grade level during the designated testing or make-up testing periods unless a student is excused from taking a particular test....*

While exemptions to such testing do exist, they are narrow.

As you know, opposition to the amount of standardized testing is mounting, and parents, teachers and others have organized groups such as “United Opt Out” in various parts of the country. For example, in Florida, a parent opt out group is advocating that parents have their child sit for the standardized test (log in or break the plastic seal if it is paper-and-pencil) but not answer any questions. In Florida, if a student does not answer any questions he or she will receive a code of “non-attemptiveness” rather than a score of zero, so there is arguably no negative impact on the school grade, teacher evaluation or the student. However, there is no similar “non-attemptiveness” rating in *Ohio*. Thus, if a student logs in but does not answer the PARCC questions in Ohio, that student would receive a score of zero, which could negatively impact the school, teacher evaluation and/or the student. For instance, if the student receives a score of “zero” on the third grade reading test he/she will not be promoted to fourth grade as part of the third grade reading guarantee.

The recent opt out form that has been circulated by parents statewide cites the 14<sup>th</sup> Amendment rights of parents in the “care, custody, and control” of their children. However, the 14<sup>th</sup> Amendment cases the form relies on also recognize the balance between parental rights and the right of the state to “reasonably regulate all schools, to inspect, supervise and examine them, their teachers and pupils.” Consequently, just as the state can compel school attendance, it has the right to test students to ensure tax payers are getting a return on their investment. Thus, we are unaware of any authority that would expressly permit a parent to opt out of state mandated standardized testing.

Unfortunately, districts are left in the difficult position of perhaps agreeing with parents/stakeholders that there should be a reduction in testing, while at the same time being rated by the state through the report card system which does not presently make exception for students who “opt out.”

### **III. Consequences of Opting Out**

While a parent could passively object to the mandated tests by simply keeping a student home on the day the test is administered, it should be noted that there are some consequences associated with certain refusals to submit to state mandated testing. *ODE advises that schools should inform parents of these consequences, including the following:*

- *Ohio Revised Code § 3313.608(2) prohibits any school district from promoting a student to the fourth grade “who does not attain at least the equivalent level of achievement ... on the assessment prescribed” for the third grade reading guarantee.*
- *A student who does not take the Ohio Test of English Language Acquisition cannot exit the English as a Second Language program.*
- *A student who does not take and pass the OGT or does not take the end-of-course tests or the substitute end-of-course tests will not be eligible for a high school diploma.*
- *The student may receive unexcused absences if he/she does not attend school on a testing day.*
- *Student participation on state tests is included on the Ohio Report Card for districts and schools and to meet federal No Child Left Behind requirements. In cases where fewer than 95 percent of the students in any student group take the required assessment, it does impact the letter grade in one A-F component. The Ohio Department of Education would reduce the letter grade, by one level (example, an “A” would become a “B”). The component, called Gap Closing, measures whether students are succeeding, regardless of income, race, ethnicity or disability. Depending on the final letter grade, the district may have reduced flexibility in how it spends its federal money and may have to implement a school improvement plan.*
- *A district receives no credit when a student does not participate in state testing, which can impact negatively the district’s state A-F ratings. Families and businesses often include district ratings in choosing where they live and locate a business.*

*\* Note, ODE has also suggested that districts have parents opt out in writing in order to document the refusal. There has been some discussion that ODE may be considering a "fix" that would prevent districts from suffering negative consequences on their report cards due to students opting out. Thus, tracking the students who opt out may help the district later on if it is permitted to amend its testing information. However, there is no guarantee of this fix. Therefore, at this time, districts must assume a student who opts out will count against the district report card. In the end, I am hopeful that there will be resolution to the new testing debacle we are all currently facing.*

*Sincerely*

A handwritten signature in blue ink that reads "Rusty Bookman". The signature is written in a cursive style with a large initial "R".

*Rusty Bookman, Superintendent  
Meigs Local School District*