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Opting Out of Testing: A Befuddling Mix of State Rules

By Catherine Gewertz on March 2, 2015 10:17 AM

Spring testing season has officially begun, and in 2015, that can only mean one thing: another injection of fuel into the fire of assessment opt-outs.

We have three exhibits to offer you this morning: *The New York Times* examines the **wave of testing opt-out activity nationwide**. The Associated Press reports that **thousands of students in New Mexico** are using social media to organize a test boycott. And Pennsylvania's **Patriot News** continues to roll out a **series of stories on anti-testing sentiment in the Keystone State**.

Even as assessment pushback grows, however, the state of the law on the right to boycott tests isn't as clear as you'd expect. The Education Commission of the States, a research group based in Denver, took on the thorny question of what's permitted, and found a confusing assortment of laws and policies, and a whole lot of even-more-confusing silence on the question on opting out.

In a **new white paper**, the ECS found that only a handful of states have clear laws one way or the other on whether parents can keep their children out of state-mandated tests. But in most states, there is no law on the subject, or the law isn't clear. In such murky terrain, some state departments of education have clarified their policies on opt-outs, but others "are often silent on the issue," the ECS says.

Activists have plunged into that gap. United Opt Out, which has helped organize testing boycotts in a number of states, has issued **guidance to help parents mount arguments against schools** that resist their attempts to keep their children out of testing. **FairTest has built a page of resources** for parents and students who wish to opt out.

The ECS paper makes it clear that in many states, the law books are not the place to look for clarity on the question of whether parents can excuse their children from state testing. Few states have clear laws on that issue, but California and Utah do: they allow opt-outs. Texas and Arkansas have laws, too, but they tilt the other way: they forbid opt-outs.

More often, the question is addressed by state departments of education, when it's addressed at all. The ECS report cites Michigan and Minnesota as examples of states that don't have laws on opting out but have issued statements on their policies.

The cloudiness of the law on parent opt-outs seems to have galvanized state lawmakers. The ECS paper highlights legislative activity in a number of states on this question. One way or the other, there could well be more clarity on this hot-button topic by the end of the year.

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