

Opting for the Opt Out (or the Opt In)

Jennifer MacLennan, Esq.

Susan Segal, Esq.

Why is this relevant today?

- Opposition to Common Core (College and Career Ready Standards).
- Organizations across the nation are popping up advising parents and guardians of their rights with respect to opting out of curriculum and tests.
- School districts in Arizona are receiving a number of requests in various formats asking/demanding that the district exclude their child from various activities and information or data: tests, curricula, and records.

STUDENT PRIVACY PROTECTION OPT-OUT REQUEST

PLEASE TAKE NOTICE that in accordance with the fundamental constitutional rights of parents and legal guardians to determine and direct the care, teaching and education of their children, and the relevant state and federal statutes, I hereby request my child be exempted and excused from the school year _____ from the following check marked activities:

- ☒ Any and all standardized testing or activities required by law, under which individual student data are collected and/or shared with the federal government or other entities outside of the local school district; or are used for the purposes of school, student, or teacher accountability, including but not by way of limitation to, academic, achievement and annual tests, state-wide performance assessments and Common Core State Standards aligned assessments and pilots, computer adaptive testing and assessments designed by Smarter Balanced Assessment Consortium (SBAC) or Partnership for Assessment of Readiness for College and Careers (PARCC). *AZ merit*
- ☒ Any and all tests, assessments, or surveys not limited solely to proficiency in core academic subjects.
- ☒ Any and all tests, assessments, or surveys used to measure pupils' values, attitudes or beliefs.
- ☒ Any survey, analysis, or evaluation that reveals information concerning my child, myself or other members of my family related to: (1) political affiliations or beliefs of the student or the student's parent; (2) mental or psychological problems of the student or the student's family; (3) sex behavior or attitudes; (4) illegal, anti-social, self-incriminating, or demeaning behavior; (5) critical appraisals of other individuals with whom respondents have close family relationships; (6) legally recognized privileged or analogous relationships, such as those of lawyers, physicians, and ministers; (7) religious practices, affiliations, or beliefs of the student or student's parent; or (8) income.
- ☒ The collection, tracking, housing, reporting, selling, or sharing with any party outside of the local school district, of non-educational related information on my child or my family, including, but not limited to: religion, political affiliations, biometric data, psychometric data, and medical information. Biometric data includes fingerprints, retina and iris (eye) patterns, voiceprint, DNA sequence, facial characteristics, handwriting, and any other unique physical identifying traits. Psychometric data includes, but is not limited to: personality traits, attitudes, abilities, aptitude, social and emotional development, tendencies, inclinations, interests, and motivations.
- ☒ The sharing with any party outside of the local school district of my child's directory information, including, but not limited to: name, address, telephone listing, e-mail address, photograph, date and place of birth, major field of study, grade level, enrollment status, dates of attendance, participation in officially recognized activities and sports, weight, height, athletic teams, degrees, honors, awards, and most recent educational agency or institution attended.
- ☒ The sharing with any party outside of the local school district of my child's student ID number, social security number, or other unique identifying number.

- ☒ Any computer or online based educational services activities or assessments through which individual student data or metadata is stored in a manner inconsistent with industry requirements and best practices or is shared with any party outside the local school district.
- ☒ Any Common Core State Standards aligned activities, surveys or assessments that concern the attitudes, beliefs, including religious or political beliefs, or value systems of individual students.

This executed form supersedes all prior Opt-Out forms.

I.D. Number _____ Grade _____ Date _____

Parent/Guardian's Name(s) _____

Signature _____

Daytime/Evening Phone Number(s) _____

E-Mail address _____

Received by (name) _____

Signature _____ Date received _____

Prepared By The Thomas More Law Center, Ann Arbor, MI
(734) 827-2001, www.thomasmore.org

Fundamental Right of Parents

- U.S. Supreme Court recognized and affirmed the “fundamental right” of parents to make decisions regarding the care, custody and control of their children. *Troxel v. Granville* (2000).
 - Primary role of parents in the upbringing of their children is “beyond debate” and an “enduring American tradition”.
 - Addressed grandparent visitation rights.
 - Court refused to apply “strict scrutiny” as the standard of review.

Results. Relationships. Reputation.

Parents' Bill of Rights

Parents' Bill of Rights

A.R.S. §§1-601 *et. seq.* and 15-102 *et. seq.*

- Adopted by the Arizona legislature in 2010.
- Lists specific rights “reserved to a parent of a minor child.”
- Purpose is to reserve the enumerated rights to the parent “without obstruction or interference from the state.”

Parents' Bill of Rights

- Rights include:
 - The right to direct the education of the minor child.
 - The right to direct the upbringing of the minor child.
 - The right to direct the moral or religious training of the minor child.

Parents' Bill of Rights

The Parents' Bill of Rights specifically states that parents have "all rights of parents identified in Title 15, including the right to access and review all records relating to the minor child."

(Title 15 is the chapter of A.R.S. relating to education and school districts.)

Parents' Bill of Rights

- Parents have the right to give consent in writing before a school district makes a video or voice recording unless the video is solely to be used for the following:
 - Safety demonstrations including the maintenance of order and discipline in the common areas of a school or on buses/transportation vehicles;
 - A purpose related to a legitimate academic or extracurricular activity;
 - A purpose related to classroom instruction;
 - Security or surveillance of building or grounds; or
 - A photo identification card.

Parents' Bill of Rights

- Includes the right to be notified if an employee of the state suspects that a criminal offense has been committed against the minor child unless:
 - The crime was allegedly committed by the parent;
 - Notification would impede a law enforcement investigation.
- The requirement does not create any new obligation for school districts to report misconduct between students such as fighting or aggressive play that is routinely addressed through discipline policies.

Parents' Bill of Rights

The law states that any attempt to “encourage” or “coerce” a minor child to withhold information from their parent shall be grounds for discipline of an employee.

Note: This is not typically addressed in School Board policies.

Parents' Bill of Rights

- Parent's Bill of Rights (A.R.S. §1-601) does not cover every right given to parents by statute.
- In fact, it specifically states that parents retain all rights granted to them in Title 15.
- Title 15 contains additional specifics regarding opt out provisions.

Opting Out of Curricula, Immunizations, Aids
Instruction, Attendance, ELL

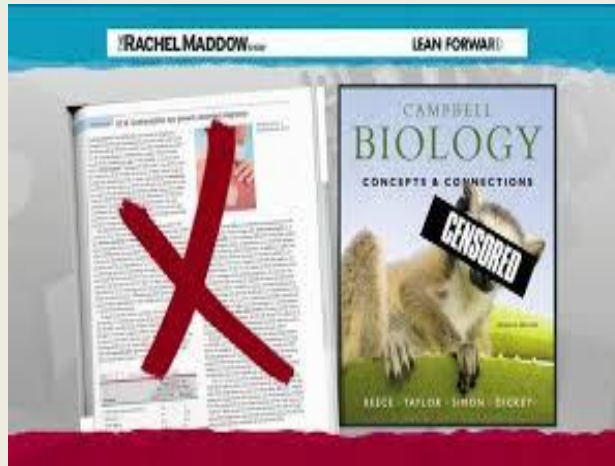
Opting In to Sex Ed, R-Rated Movies
and Clubs

Right to Opt Out of Curricula

- A.R.S. §15-102 defines parental involvement in the school.
- Parents have the right to “object” to “any learning material or activity” that is “harmful” and may withdraw the student from the:
 - Activity
 - Class
 - Program
- “Harmful” is specifically defined to include an objection to a material or activity because it questions beliefs or practices in sex, morality or religion.

Right to Opt Out of Curricula

- How far does this go?
- Text books? What about the controversy over biology textbooks that cover contraception?
- New argument-A.R.S. §15-110-religious viewpoint.



Right to Opt Out of Curricula

A.R.S. §15-110 states:

- If an assignment requires a student's viewpoint to be expressed in coursework, artwork or other written or oral assignments, a public educational institution shall not penalize or reward a student on the basis of religious content or a religious viewpoint.
- A student's academic work that expresses a religious viewpoint shall be evaluated based on ordinary academic standards of substance and relevance to the course curriculum or requirements of the coursework or assignment.

Right to Opt Out of Curricula

- A.R.S. §15-113 provides parents the right to review learning materials and activities in advance.
- Specifically states parents may request alternative assignment.
- Parents may object on the basis that the material is “harmful” in that it has:
 - Sexual content,
 - Violent content,
 - Profane or vulgar language.

Right to Opt In to Rated “R”

School districts must obtain signed written consent from a student's parents before using video, audio or electronic materials that may be inappropriate for the age of the student.

Right to Opt In to Sex Education

A.R.S. §15-102(7)(a)

- Right to opt in to sex education curricula offered.
- Must have procedures to obtain permission.
- Must give notification in advance of any instruction or presentation regarding sexuality in courses other than formal sex education curricula.

Right to Opt Out of Immunizations

- Governed by A.R.S. §15-873.
- Forefront of the news with measles outbreak.
- Must inform parents of their right to opt out of immunizations.
- Parents or physician must have submitted requisite signed statements.

Right to Opt Out of AIDS Instruction

- Governed by A.R.S. §15-716.
- School districts must provide instruction re AIDS and HIV.
- Schools must notify all parents of their right to have their student opt out of this instruction.

Right to Opt In to Clubs

- A.R.S. §15-102 provides that parents must be given the opportunity to learn about the nature and purpose of clubs and activities.
- On one website specifically advertised as requiring the school to inform parents if the group “advocates homosexual behavior.”

Right to Opt Out of Attendance

- Parents may excuse their child from school for religious reasons – A.R.S. §15-806.
- Must given written consent and hold religious instruction away from school property.

Right to Opt Out of ELL Instruction

- Governed by A.R.S. §15-753 *et. seq.*
- May waive English language immersion instruction.

FERPA

Opting Out of Directory Information

Family Education Rights and Privacy Act

- Administered by the Family Policy Compliance office of the U.S. Department of Education.
- Grants custodial and noncustodial parents alike rights with respect to review of their educational records.
- Applies until the student turns 18.

Arizona Law Specific to Review Rights

A.R.S. § 25-403.06:

Unless otherwise provided by court order or law, on reasonable request both parents are entitled to have equal access to prescription medication, documents and other information concerning the child's education and physical, mental, moral and emotional health including medical, school, police, court and other records directly from the custodian of the records or from the other parent.

Family Education Rights and Privacy Act

- School districts can disclose “directory information” without consent if parents haven’t opted out.
- Parents have a right to opt out of disclosure of “directory information.”
- School districts must publish a list of what constitutes directory information annually and give parents an annual option to opt out.
- Must tell parents of their right and how to notify school.
- School districts cannot release directory information if the parents have opted out.

Family Education Rights and Privacy Act

- Model policies available on U.S. Department of Education Website.
- Model notices available.
- Check Governing Board policies (typically JR re Student Records).
- Check notices that go home.
- What are your district's procedures for accounting for parent options here.
- What information is not distributed when parents opt out.

Family Education Rights and Privacy Act

- Some information is not an educational record.
- What about videos of a fight? Bus videos, etc. Who gets to see them when multiple students are involved?

Opting Out of Tests



Opting Out of Tests

Position of the Attorney General and the Arizona Department of Education

December 10, 2014 from the Attorney General:

- “nothing in A.R.S. §15-102 . . . allows a parent to withdraw a child from testing. . . a statewide assessment of achievement is neither a learning activity nor a learning material.”
- Cites Arizona Attorney General Opinion I97-008.

Opting Out of Tests



Norman Joseph, left, a former educator and activist philanthropist, and Cindy Franklin, a parent and the co-founder of *Our Kids* that they lead a session at United Way's national conference in Fort Lauderdale, Fla.

Activists Learn Art of 'Test Refusal'

A2 Challenge: Anti-Testing Groups Struggling on Ways to Grow Their Banks

Die Lange Feste

References

[illegible]

The 70 or so parents, educators, media leaders, and well-known "experts" at the United Way-led Summit Standing Up for Asian Children, which took place over a weekend before the event, distinguished in part by more people invited to the summit than at "No Nukes" – in the hope of ultimately making what they consider positive and useful headlines, leaving parents at 8:30 adults.

"We have to know this is an act of civil disobedience," Gandy says. "It's a protest, and the intention of Citizens Up Out, not a group of plotters. This is not for the sake of protest."

The increasing threat of a small number of so-called "harmful" insects has led to a growing concern that a ban on the use of insecticides will be imposed. The U.S. Environmental Protection Agency (EPA) is currently reviewing the use of insecticides in the United States. The EPA is currently reviewing the use of insecticides in the United States. The EPA is currently reviewing the use of insecticides in the United States.

But, I believe strongly, I think, the best classroom of the future advances computers, introduced a third 142 One month will see proposed policy in testing and use of which would give some leeway to test students and use in particular, to grade more often than merely then, most common information characterized both each, and to grade to not use in high school.

U.S. Summary of Rehearsal, from *Therapy*, while watching rehearsal in the classroom by keeping the room's ceiling in place, has said he is like to July 1990 and photos were not used in any way. And in October 1990, the author said a national group representing top city officials, including a plan to create a new city...

Advocates are armed with their own arguments.

- “Testing crowds out anything meaningful.”
- Too much time devoted to testing.
- False indicator on what the student is learning or **should** be learning.
- Harmful psychologically -“PTTD” “Child Abuse.”

Teachers are joining the fray:

- New York: Teacher Compensation Based Upon Student Performance on Common Core Based Tests is Unfair.

Opting Out of Tests

Strategies they are using:

- “An act of civil disobedience.”
- Call your child in sick.
 - But that raises questions of absences and mandatory withdrawal-A.R.S. §15-901(A)(1).
- Tell your child not to answer the questions.
 - Will the school be penalized? ADE says no.

What to do?

- Train your principals.
- Develop a letter they can use.
- Be prepared and discuss how you will react.

What to do?

- “Don’t put your child in the middle of this.”
- “Call your legislator.”
- What about the child who is sent to school but told not to take the test.
 - We have not confronted this yet, but our guess is that we will.

A final word . . .

- What do you do about board members and staff who are opposed to Common Core or the tests associated with them?
- Remember the Oath of Office.