



## STANDARDIZED STATE ASSESSMENTS AND OPT OUT

Legislation passed by the Colorado General Assembly in 2015 and 2017 made significant changes to Colorado's standardized assessment system and created a statutory right for parents to opt their children out of standardized state assessments. The federal Every Student Succeeds Act (ESSA) also contains provisions on standardized testing. This memo provides an overview of federal and state requirements pertaining to standardized assessments in Colorado public schools.

### ***What standardized assessments are required by federal law?***

ESSA requires school districts that receive federal funds to administer standardized tests to students as follows:

- Reading or language arts annually in grades 3 through 8 and at least once in high school (grades 9 through 12);
- Mathematics annually in grades 3 through 8 and at least once in high school (grades 9 through 12); and
- Science at least once in grades 3 through 5, once in grades 6 through 9, and once in grades 10 through 12. *See*, 20 U.S.C. 6311(b)(2)(B)(v)(I)&(II).

### ***What standardized assessments are required by state law?***

State law requires school districts to administer standardized assessments as follows:

- English language arts (reading and writing) annually in grades 3 through 8;
- Mathematics annually in grades 3 through 8;
- Science once in elementary, once in middle school, and once in high school (but not 12<sup>th</sup> grade);
- Social studies once in elementary school, once in middle school, and once in high school (but not 12<sup>th</sup> grade), using a sampling approach (i.e. once every three years at each school level);
- A 9<sup>th</sup> grade assessment aligned with the 10<sup>th</sup> grade assessment and state academic standards; and
- An 11<sup>th</sup> grade curriculum-based achievement college entrance exam.<sup>1</sup> *See*, C.R.S. 22-7-1006.3(1) & (2).

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<sup>1</sup>Pursuant to HB 15-1323 and HB 17-1181, the Colorado Department of Education conducted a bidding process and selected the PSAT 8/9, PSAT 10, and SAT to satisfy C.R.S. 22-7-1006.3(2)'s requirements regarding aligned assessments. Ninth graders will begin taking the PSAT 8/9 in spring of 2018.

State law also requires school districts to administer the following standardized assessments to students:

- School readiness assessment for kindergartners, C.R.S. 22-7-1014(2)(a) (Preschool to Postsecondary Education Alignment Act, or CAP4K);
- Annual literacy assessment for students in kindergarten through 3<sup>rd</sup> grade, C.R.S. 22-7-1201 *et seq.* (Colorado READ Act); and
- ACCESS assessment for English language learners, C.R.S. 22-24-101 *et seq.* (English Language Proficiency Act or ELPA).

***Does the law require all students to take the standardized assessments?***

Yes, ESSA and state law require all students enrolled in public schools to take the state's standardized assessments, with limited exceptions for certain categories of students. Specifically:

- Students with severe cognitive disabilities may take alternate assessments;
- Students with limited English proficiency may take assessments in their native language for a limited number of years; and
- Private school and home-schooled students who are enrolled in a public school for a portion of the school day are exempt from federal and state testing requirements, even if they are included in the school district's pupil enrollment count.

***What does federal law say about student participation rates and parent opt out?***

ESSA requires states to assess 95% of all students and 95% of each subgroup of students. ESSA does not preempt state law regarding the decision of parents to not have their children participate in state assessments, but students who opt out of state assessments must still be counted against the federal 95% participation rate requirement. ESSA requires schools to notify parents that they may request, and the school will provide upon request and in a timely manner, information regarding any state or school policy about student participation in any assessments mandated by federal law, state law, or the school, which shall include a policy, procedure or parental right to opt the child out of such assessment, where applicable.

Additionally, ESSA requires student participation rates to be factored into state accountability systems, allowing states to determine the consequences for districts and schools with lower participation rates. ESSA's accompanying regulations, effective as of January 30, 2017, require states to either:

- Assign schools that miss the 95% participation rate to a lower summative performance level in the state's accountability system;
- Assign such schools to the state's lowest rating on the academic achievement indicator in the state's accountability system;
- Identify such schools for a targeted support and improvement plan; or

- Take another “sufficiently rigorous state-determined action” that will lead to improvement in the school’s participation rate. *See*, 34 CFR 200.15.

***What does state law say about student participation rates and parent opt out?***

State law does not require a 95% participation rate. Currently, the State Board of Education’s rules implementing the Education Accountability Act of 2009 provide that student participation rates will be “factored into” the assignment of a school district’s and school’s accreditation ratings. *See*, C.R.S. 22-11-210(2.5); 1 CCR 301-1, Rule 5.02, Rule 10.01(A).<sup>2</sup> Nonetheless, a resolution adopted by the State Board in March, 2015, declared that districts and schools would not be held liable for parent excusals from state assessments.

State law does require that districts adopt a “written policy and procedure” allowing parents to excuse their children from all or any portion of a state assessment. C.R.S. 22-7-1013(8)(a). Thus, parents have a right to opt their children out of taking standardized state assessments in English language arts, math, science and social studies as well as the 9<sup>th</sup> and 10<sup>th</sup> grade aligned assessments and 11<sup>th</sup> grade college entrance achievement exam. This opt out right does not extend to district and classroom assessments.

Districts may not impose any “negative consequences” on the student or the student’s parent when the parent excuses his or her child from participating in one or more state assessments. Such negative consequences include “prohibiting school attendance, imposing an unexcused absence, or prohibiting participation in extracurricular activities.” Importantly, state law *does not* require the district to offer alternative education options to those students who opt out of a state assessment, but *does* prohibit the district from telling these students not to come to school when the district is administering the state assessment to other students. C.R.S. 22-7-1013(8)(b).

State law also prohibits districts from imposing “an unreasonable burden or requirement” that would discourage a student from taking the state assessment or encourage the student’s parent to excuse the student from taking a state assessment. C.R.S. 22-7-1013(8)(c).

***How is Colorado reconciling the federal participation rate with the state’s opt-out laws?***

In May 2017, the Colorado Department of Education (CDE) submitted Colorado’s ESSA state plan to the United States Department of Education (USDOE). In August 2017, the USDOE indicated Colorado’s state plan opt-out provisions did not comply with ESSA.

At the Colorado State Board of Education (SBE) meeting in October 2017, the State Board decided to utilize two rating systems for schools—the existing state system created

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<sup>2</sup> The 95% participation rate does not apply to school readiness assessments, the READ Act literacy assessments, or the ACCESS assessment for English Language Learners.

pursuant to the Education Accountability Act of 2009 and a new system that meets ESSA requirements. The State Board directed CDE to update the previously submitted state plan as follows: “when calculating achievement ratings for identifying schools under ESSA for comprehensive or targeted support, but not for state performance frameworks, the state will count any non-participants in excess of 5% as non-proficient records, in accordance with federal requests.”

The goal of the State Board’s proposed dual system is to prevent student opt-outs from impacting school and district ratings in the state accountability system. Consequences for low student participation rates may change, however, depending on the USDOE’s response to Colorado’s revised state plan. CASB will continue to monitor this issue for additional developments.

***What is CASB doing?***

As directed by the CASB Delegate Assembly, CASB will continue to support its membership and advocate for reducing state assessments to the federal minimum. CASB will also continue to advocate for practical solutions to address ESSA’s 95% student participate requirement when districts experience a high percentage of parent requests to opt their children out of standardized assessments.

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