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Via email: Carrie.O'Brien@azed.gov

Carrie O'Brien
Director of Legal Services
Arizona Department of Education
1535 W. Jefferson Street
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RE: Parent Requests to Opt Out of State-Mandated Testing

Dear Carrie:

You have asked for advice regarding parents' ability to opt out of state-mandated assessments, such as AIMS. You pointed out that although there is an Arizona Attorney General Opinion, Op. Ariz. Att'y Gen. I97-008, that states that parents cannot withdraw their children from state-mandated testing, there are, nonetheless, parents who assert such a right exists. Such parents rely on A.R.S. § 15-102; one website that supports and encourages parents to withdraw their children from statewide assessments is www.unitedoptout.com.

The 1997 Attorney General Opinion reviewed Arizona's statutory scheme for assessing pupil achievement throughout the state, as set out in A.R.S. §§ 15-741, 743 and 746. Taken together, those statutes require the Board of Education to develop and implement a uniform, statewide system of assessing pupil achievement, require school districts to administer such tests and report the results, and describe the use of test results in "school report cards." As the 1997 Opinion noted, there were two bases for exemption from standardized testing: 1) for certain disabled students, and 2) for students with limited English proficiency. A.R.S. § 15-744. Neither of these exemptions permitted a parent or guardian to withdraw a child from testing for reasons other than those listed in the statute. The Opinion

thus concluded that there was no basis for parents to withdraw their students from statewide assessments.

While the statutes have changed in the past fifteen years, those changes do not provide parents with a basis for keeping their children from being assessed. The statutes still require that the "state board of education shall . . . (2) adopt and implement an Arizona instrument to measure standards test to measure pupil achievement of the board adopted standards" and that "(C) Local school district governing boards shall: administer the test prescribed in subsection A of" 15-741.¹ Furthermore, the provision setting out the limited exemptions from testing has been repealed. H.B. 2425, 51st Leg., 1st Reg. Sess. (AZ 2013)(repealing A.R.S. §§ 15-744 and -747). Thus, all school districts must now assess all pupils. There are no statutory exemptions.

Parents who wish to withdraw their children from statewide assessments have relied on A.R.S. § 15-102. The 1997 Opinion rejected this statute as a basis for requesting that a child not be tested. It noted that while A.R.S. § 15-102 clearly requires that school boards adopt policies to ensure parents and guardians are involved in their children's education and provides a method for parents to prevent their children from being exposed to certain learning materials, nothing in that statute allows a parent to withdraw a child from testing. A.R.S. § 15-102 has been amended several times since 1997, and it now includes a long list of parental rights, including many rights to "opt out" of a variety of school requirements. A.R.S. § 15-102(A)(7). While the new section does mention testing, it does so only to enforce a parent's right to be notified of a child's test results, as required by A.R.S. § 15-743. A.R.S. § 15-102(A)(7)(h). Thus, the changes to this statute reinforce the conclusion of the 1997 Opinion, that the legislature could have included a parental right to exempt a child from testing, but did not.

You noted that parents wishing to prevent their children from being assessed rely on information found at the unitedoptout.com website. The Arizona portion of this national website recommends that parents write a letter refusing to allow a child to take the test, stating such testing "question [sic] your beliefs or practices in morality or religion." The website does not explain why such a letter would be sufficient, and nothing in the relevant statutes indicates that it would be. While A.R.S. § 15-102 does provide that a parent may withdraw a child from a learning activity or prevent them from being exposed to a learning material if such activity or material "questions beliefs or practices in sex, morality or religion," a statewide assessment of achievement is neither a learning activity nor a learning material.

The website also recommends that parents list in their letter the following means of assessing a child lieu of high stakes testing:

- a) LEA-developed criterion-referenced tests of academic achievement that

¹ In the most recent legislative year, the statutes were amended to eliminate the requirement that high school students achieve certain standards on the assessments in reading, writing and mathematics to graduate. See A.R.S. § 15-741(A)(2), effective September 13, 2013.

- demonstrate alignment to the Arizona Academic Standards; or
- b) Standardized tests measuring academic achievement that demonstrate alignment to the Arizona Academic Standards; or
 - c) Nationally norm-referenced test scores; or
 - d) Teacher recommendations based on classroom assessments that demonstrate alignment to the Arizona Academic Standards.

These are copied from A.A.C. 7-2-306(I)(3), which governs English Language Learner programs, and more specifically, evaluation of students who have exited ELL programs where an AIMS test score is not available. These alternate means of testing have nothing to do with the mandatory statewide testing required by A.R.S. § 15-741, and do not provide an alternative in lieu of such testing.

For the reasons stated in the 1997 Opinion, and in this letter, parents may not refuse to allow their children to participate in mandatory achievement assessments. As the 1997 Opinion pointed out, allowing parents to opt out of such testing could lead to manipulation of the system and could compromise or invalidate test results for specific schools, "thus defeating the purpose of the legislative assessment and reporting mandates."

Sincerely yours,



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LKC:mig

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