

FairTest

National Center for Fair & Open Testing

How NCLB Relates to Opting Out of Tests

Federal law, No Child Left Behind in particular, does not prohibit or allow opting out of tests by parents or students. The law's requirements do give schools and districts an incentive to prevent opting out. That is because of the consequences for schools and districts of NCLB's "Adequate Yearly Progress" (AYP) requirements.

If fewer than 95% of the students in a given school or district take the test (based on 3-year rolling averages) that school cannot make AYP. This is one of the many ways schools can fail. However, because many schools are already not making AYP, this may not matter. In other words, if your school or district is failing anyway, why worry about test participation?

It is often said that test results affect NCLB Title I funding. However, the funding impact is indirect.

- If a school fails to make AYP for two years, a portion of Title I funds must be spent on transporting students to another school in the district that is making AYP (if there are any making AYP and don't have special admissions requirements such as minimum test scores).
- After three years, Title I funds must in part go to 'supplemental services' (e.g., small group after school instruction, often test prep).
- Up to 20% of Title I funds must be earmarked for these two purposes, with no more than 15% of Title I funds required to be spent on either one of the two. There is evidence that many districts are not spending the 20%. Still, this is a financial consequence.

There are no other federal financial penalties for schools that receive Title I funds and do not make AYP. Other consequences, such as privatizing control over a school or closing it, may have financial implications.

NCLB only requires states to impose the escalating AYP sanctions on schools that receive Title I funds (but all schools must test and report the disaggregated results). States, however, can apply the sanctions to all their schools if they want, or impose other penalties, including loss of funds. If so, those are state decisions and can be opposed at the state (or district) level. If you are in a state that imposes more sanctions than NCLB requires, you should investigate whether the state uses the 95% rule for those extra sanctions.

Finally, a major reason for the 95% rule is that some districts had a history of holding low scoring, disabled, ELL or other students out of testing to make the school or district look better. Some advocates for those students supported the 95% rule as a way to preclude students from being excluded from testing and therefore educationally ignored. Those are legitimate concerns that should be addressed as parents, students and communities decide to opt out of testing.

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