

GENERIC OPT OUT LETTER GUIDELINES

(provided by *United Opt Out*)

A great deal of rules, regulations, and policies regarding opting a student out of high stakes standardized tests are STATE SPECIFIC. We recommend you look at your state-level guide currently available on United Opt Out National Facebook page.

However, there are facts and arguments which transcend state level regulations and can be used regardless of the state or district in which your child attends school. Here are some things anyone can and should include in their opt out/testing refusal letter:

- 1) California is the only state that has official “opt out” policies. Therefore, it is likely that unless you live in California (or Pennsylvania using religious exemption to opt out) if you write a letter requesting to “opt your child out” you will receive a letter stating they cannot honor your request because there is no opt out clause. **Make sure to state that you are REFUSING** to allow your child to participate in the testing.
- 2) Briefly state WHY you are refusing the tests:

My refusal to participate in (name the tests) is because I believe standardized high stakes testing take away time from the instructional experiences my child might otherwise receive. I want more teaching and learning, and less testing! The state seems to believe that my child is obligated to participate in testing because the state or the policy makers demand it, when in fact the social contract of public schooling is grounded on the premise that the state and policy makers are obligated to the needs of children.

- 3) Most states do require that all children be ASSESSED at each grade level. Make sure to articulate that TESTING does equate to assessment and that in lieu of testing you require your child’s performance be assessed using: performance based assessments, teacher-made materials, portfolios and project-based assignments.
- 4) U.S Constitutional rights trump local school policies. Therefore include legal precedents that were set forth grounded in the following legal cases (see legal case descriptions at end of this document):

According to the U.S Constitution, specifically the 14th Amendment, parental rights are broadly protected by Supreme Court decisions (Meyer and Pierce), especially in the area of education. The Supreme Court has repeatedly held that parents possess the “fundamental right” to “direct the upbringing and education of their children.” Furthermore, the Court declared that “the child is not the mere creature of the State: those who nurture him and direct his destiny have the right coupled with the high duty to recognize and prepare him for additional obligations.” (Pierce v. Society of Sisters, 268 U.S. 510, 534-35) The Supreme Court criticized a state legislature for trying to interfere “with the power of parents to control the education of their own.” (Meyer v. Nebraska,

262 U.S. 390, 402.) ***In Meyer, the Supreme Court held that the right of parents to raise their children free from unreasonable state interferences is one of the unwritten “liberties” protected by the Due Process Clause of the Fourteenth Amendment.*** (262 U.S. 399). ***In recognition of both the right and responsibility of parents to control their children’s education, the Court has stated, “It is cardinal with us that the custody, care and nurture of the child reside first in the parents, whose primary function and freedom include preparation for the obligations the State can neither supply nor hinder.” (Prince v. Massachusetts, 321 U.S. 158)***

- 5) Make sure to articulate what you expect your child to be doing during the testing window. Do not accept statements telling you your child must either be kept out of school or “sit and stare” in the testing room during the tests, or be forced to sit in quarantine or other abusive conditions:

Sample: *“It is my child’s right as a public school student to receive instruction daily, and if you do not do so, I will file a discrimination report with the district and consult an attorney. I am a taxpayer, and you do not have the authority to bar my child from accessing this public good of which I contribute in the form of tax payment. I will call the police if you attempt to bar my child from entering the building. However, should you **prove to me in writing** that this last alternative is legally **REQUIRED**, then I respectfully request to both see that policy as stated **IN WRITING** so that I may show it to my attorney, and I require **WRITTEN** documentation that my child and his parents **WILL NOT** be punished for ‘delinquency’ –and that we are **EXEMPT** from the usual (school/county) attendance policies.*

If my child is forced to sit in the testing room and stare at the wall for upwards of 70 minutes in total silence without being allowed to leave the test room, nor move nor speak, while refusing to test, or is intimidated in any way, will be seen as tantamount to solitary confinement. If you attempt to force my child to do so, I will report you to the child abuse authorities. If anyone places their hands on my child after he/she has respectfully declined to report to a test site, he/she has been instructed to call the police and file charges.”

- 6) Whatever they tell you, **DEMAND** to see if in **WRITING**. If your child is threatened with social or academic forms of punishment for testing refusal, make sure they show you in writing where it states it’s their legally sanction policy that entitles them to do this to your child.

Final note: Don’t be afraid to get tough. The language may sound harsh at times, but we’ve seen the horrific stories of child abuse at the hands of those who wish to force testing or punish those who refuse. If you don’t get tough, they will often try and push expecting you to cave. Our personal experience and stories from others show that when parents do get tough, the state and administrators will **BACK DOWN.**

GENERIC SAMPLE LETTER (including items 1-6)

Dear (school administrator),

Please accept this letter as record of my decision to refuse for my child (name) to participate in (list test names) at (school) during the year) school year. *My refusal to participate in (name the tests) is because I believe standardized high stakes testing take away time from the instructional experiences my child might otherwise receive. I want more teaching and learning, and less testing!* The state seems to believe that my child is obligated to participate in testing because the state or the policy makers demand it, when in fact the social contract of public schooling is grounded on the premise that the state and policy makers are obligated to the needs of children. I am aware that there is no “opt out” clause in the state of _____. But the state has yet to provide any legal documentation that my child may not exercise his or her right to **refuse** the tests.

According to the U.S Constitution, specifically the 14th Amendment, parental rights are broadly protected by Supreme Court decisions (Meyer and Pierce), especially in the area of education. The Supreme Court has repeatedly held that parents possess the “fundamental right” to “direct the upbringing and education of their children.” Furthermore, the Court declared that “the child is not the mere creature of the State: those who nurture him and direct his destiny have the right coupled with the high duty to recognize and prepare him for additional obligations.” (Pierce v. Society of Sisters, 268 U.S. 510, 534-35) The Supreme Court criticized a state legislature for trying to interfere “with the power of parents to control the education of their own.” (Meyer v. Nebraska, 262 U.S. 390, 402.) **In Meyer, the Supreme Court held that the right of parents to raise their children free from unreasonable state interferences is one of the unwritten “liberties” protected by the Due Process Clause of the Fourteenth Amendment.** (262 U.S. 399). In recognition of both the right and responsibility of parents to control their children’s education, the Court has stated, **“It is cardinal with us that the custody, care and nurture of the child reside first in the parents, whose primary function and freedom include preparation for the obligations the State can neither supply nor hinder.” (Prince v. Massachusetts, 321 U.S. 158).**

I understand that it is state and local policy to require all students to be evaluated for proficiency in various subject areas at each grade level. However, I believe that testing is not synonymous with standardized testing and request that the school and my child’s teacher(s) evaluate his or her progress using alternative (and more meaningful) measures including: project-based assignments, teacher-made tests, portfolios, and performance-based assessments, to be determined at the discretion of the teachers and myself together.

My child is prepared to come to school every day during the testing window with alternative meaningful self-directed learning activities that support the essential curriculum, or is willing to participate in other meaningful activities as determined by the school or his or her teachers during testing times. It is my child’s right as a public school student to receive

instruction daily, and if you do not do so, I will file a discrimination report with the district and consult an attorney. I am a taxpayer, and you do not have the authority to bar my child from accessing this public good of which I contribute in the form of tax payment. I will call the police if you attempt to bar my child from entering the building. However, should you **prove to me in writing** that this last alternative is legally REQUIRED, then I respectfully request to both see that policy as stated IN WRITING so that I may show it to my attorney, and I require WRITTEN documentation that my child and his parents WILL NOT be punished for ‘delinquency’ –and that we are EXEMPT from the usual (school/county) attendance policies.

If my child is forced to sit in the testing room and stare at the wall for upwards of 70 minutes in total silence without being allowed to leave the test room, nor move nor speak, while refusing to test, or is intimidated in any way, will be seen as tantamount to solitary confinement. If you attempt to force my child to do so, I will report you to the child abuse authorities. If anyone places their hands on my child after he/she has respectfully declined to report to a test site, he/she has been instructed to call the police and file charges.

I have a tremendous respect for my child’s teachers and his school. They do a tremendous job and I wish to continue to send my son to a school where he looks forward to participating every day. My school’s teachers and administrators understand that this action is no way a reflection of my feelings towards them nor is it intended as an attack toward them or the great work that they do every day. My issue is with high stakes standardized testing and the harm it does to children and our public schools. I believe we can work *constructively together* to ensure that my child will not be negatively affected in any way, and that successful alternatives that are neither punitive nor require further legal complications are indeed possible.

Thank you.

Respectfully yours,

A BRIEF HISTORY OF LEGAL PRECEDENTS FOR REFUSING HIGH STAKES STANDARDIZED TESTING

“**Meyer v. Nebraska** upheld parents' rights by affirming “the natural duty of the parent to give his children education suitable to their station in life...” Clearly the preferences of the parents in educational matters outweighed those of the government. The court further emphasized, “The Fourteenth Amendment guarantees the right of the individual ... to establish a home and bring up children, to worship God according to his own conscience.”

Pierce v. Society of Sisters confirmed **Meyer v. Nebraska** and parents’ right to direct the upbringing of their children with regard to religions matters and to direct their children's education. The decision in *Pierce*, struck down an Oregon education law which, required all children ages eight and sixteen to be educated in public schools. The Court stated: "Under the

doctrine of *Meyer v. Nebraska*, we think it entirely plain that the Act of 1922 unreasonably interferes with the liberty of parents and guardians to direct the upbringing and education of children. The *Pierce* decision also upheld parents' rights to protect their children from government standardization, making it clear that children "are not the mere creature of the state..."

The Supreme Court's decision in **Prince v. Massachusetts** clearly admitted that parents held the highest responsibility and right to control the upbringing of their children, not the State.

"It is cardinal with us that the custody, care, and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligations the State can neither supply nor hinder."

Griswold v. Connecticut, emphasized that the state cannot interfere with the right of a parent to control his child's education, and that the right to educate one's child as one chooses is guaranteed in the Bill of Rights. The Court further stated that this right was applicable by the First and Fourteenth Amendments.

In 1972, Wisconsin v. Yoder upheld the *Pierce* decision by declaring:

"This case involves the fundamental interest of parents, as contrasted with that of the state, to guide the religious future and education of their children. The history and culture of Western civilization reflect a strong tradition of parental concern for the nurture and upbringing of their children. This primary role of the parents in the upbringing of their children is now established beyond debate as an enduring tradition."

The 1996 decision in *M.L.B. v. S.L.J.* firmly voiced that the choices about marriage, family life, and the upbringing of children were ranked as "of basic importance in our society," again emphasizing that the rights sheltered by the 14th Amendment against the government's "unwarranted usurpation, disregard, or disrespect." This particular case involved the State's authority to permanently sever a parent-child bond. The Court's decision unequivocally upheld parents' rights in general.

The Supreme Court in **Reno v. Flores in 2000 states:** "There is a presumption that fit parents act in their children's best interests, there is normally no reason or compelling interest for the State to inject itself into the private realm of the family to further question fit parents' ability to make the best decisions regarding their children," and **Troxel v. Granville**, "The state may not interfere in child rearing decisions when a fit parent is available."

In 1978, Congress enacted the **Protection of Pupil Rights Act**, which gives parents the right to inspect educational material--ALL educational material, which would include anything used in the course of providing instruction to our children.....A parent has the right to remove a child

from objectionable classroom instruction and/or activity. **Three clauses in two different amendments** lay the solid foundation for these constitutional provisions: **the Fourteenth Amendment's Due Process Clause, and the First Amendment's Free Speech and Free Exercise Clauses.**

The First Amendment Free Speech and Free Exercise Clauses, combined with the Fourteenth Amendment's fundamental liberty interest of parents to direct the education and upbringing of their children, form a strong foundation upon which parents can assert their right to opt their children out of objectionable school material or activities. The higher the degree of coercion on students to participate in, or otherwise endorse the classroom activity, the stronger the constitutional argument in favor of a parental opt-out right. “