

# PURE *Fact Sheet*

## Opting out of student testing: What's the law for Chicago families?

Standardized testing is increasing every year in our schools even though studies show that more testing does not lead to improved student learning. Some parents have begun opting their children out of testing, and many more are considering it. Parents are looking for information and support. Here's what the law says about student participation in standardized testing,

### Federal law

**Parents' federal constitutional rights** (*United Opt Out National*): 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) .....

### Illinois law

Illinois law has no testing opt-out provision/specified parental right to opt students out. In fact, state law states that **all children** in specified grades must be tested: “The State Board of Education shall annually test: (i) all pupils enrolled in the 3rd, 4th, 5th, 6th, 7th, and 8th grades in reading and mathematics and (ii) all pupils enrolled in the 4th and 7th grades in the biological and physical sciences. In addition, the State Board of Education shall test... all pupils enrolled in the 3rd, 5th, 6th, and 8th grades in writing during the 2008-2009 school year and each school year thereafter.” (From 105 ILCS 5/2-3.64) (from Ch. 122, par. 2-3.64) Sec. 2-3.64.)

Additionally, in order to be awarded a high school graduation diploma, **students must take the state's Prairie State Achievement test** (usually given to high school juniors) although they do not need to “pass” the test to graduate. (105 ILCS 5/2-3.64) (from Ch. 122, par. 2-3.64) Sec. 2-3.64.)

**Exemptions:** A chart on the ISBE website ([www.isbe.net/sis/pdf/not\\_testing.pdf](http://www.isbe.net/sis/pdf/not_testing.pdf)) details “**Reasons for not Testing**” which include “medically exempt, homebound exempt, in jail, out of state/country, deceased (!), absent or refusal - “student present but refused to participate in testing.”

## Chicago Public Schools policies

A thorough review of all Chicago Board of Education policies

([http://www.cps.edu/About\\_CPS/The\\_Board\\_of\\_Education/Pages/Boardpolicies.aspx](http://www.cps.edu/About_CPS/The_Board_of_Education/Pages/Boardpolicies.aspx)) reveals **no policy** on either student participation in assessments or on opting out of testing. However, there are two CPS policies that may cause specific problems for students opting out of the annual state test in certain grades.

- The **CPS Elementary Promotion Policy** requires **3rd, 6th and 8th grade students** to score above the 24th National Percentile Ranking on the “District Wide Assessment” (DWA) as one of the criteria for automatic promotion to the next grade. The DWA is defined as either the norm-referenced section of the Illinois Standards Achievement Test (ISAT) or another nationally-normed test (this wiggle language seems intended to allow the use of new assessments such as those coming soon under the Common Core.) The policy does specify that if a student does not have ISAT reading or math scores, he/she may still be promoted if his/her reading and math report card grades are C or better. The policy also says. “If a student's DWA results are incomplete or inaccessible through no fault of the student, the Office of P-12 Management shall make a promotion determination using the best available data consistent with the standards described in this policy.” (<http://policy.cps.k12.il.us/download.aspx?ID=45>)
- **CPS selective enrollment high school admission requirements:** “Testing eligibility will be based on the student’s (seventh grade) 2011-2012 ISAT scores in reading comprehension and total math or, if the student did not take the ISAT, on a different nationally normed test (e.g., ITBS, Terra Nova, etc.). In order to be eligible for testing, students must have achieved a minimum stanine of five in reading comprehension and a minimum stanine of five in total math. No exceptions will be made for students who do not possess these minimum stanines. Students with an IEP or a 504 Plan and students in bilingual programs must have reading comprehension and total math scores that equal at least 10 (e.g., 3 and 7; 4 and 6) in order to take the admission examination. ([http://www.cps.edu/Schools/High\\_schools/Pages/Selectiveenrollment.aspx](http://www.cps.edu/Schools/High_schools/Pages/Selectiveenrollment.aspx))

Some parents have written opt-out letters to their children's school based on a comment in a 2010 letter from former CPS Chief Education Officer Barbara Eason-Watkins: “If parents choose to exclude their children (from testing), the school has no obligation to provide an alternate activity. Your child will be asked to engage in a silent, self-guided activity.” (Letter available on Substance News site, <http://www.substancenews.net/articles.php?page=2091>)

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More information at:

[www.pureparents.org](http://www.pureparents.org)

[www.parentsacrossamerica.org](http://www.parentsacrossamerica.org)

[www.fairtest.org](http://www.fairtest.org)

[www.unitedoptout.com](http://www.unitedoptout.com) – see especially United Opt Out's Toolkit: <http://unitedoptout.com/united-opt-out-national-toolkit-opt-out-of-high-stakes-testing/>

For legal assistance: Elaine K. B. Siegel and Assoc., P.C. 312-583-9970 or [siegeledlaw@yahoo.com](mailto:siegeledlaw@yahoo.com)

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