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DEPARTMENT OF EDUCATION
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MEMORANDUM

TO: Directors of Schools
FROM: Christy Ballard, General Counsel
RE: Legal Position Regarding Opt Out of Mandated State Assessments
DATE: April 14, 2015

In response to inquiries from local education agencies (LEAs) regarding parent refusal and/or opt out requests for student participation in mandated state assessments, the Tennessee Department of Education is providing additional guidance to supplement information provided in our April 2014 memorandum, "Attendance & Assessment Policies." The purpose of this supplemental guidance is to clarify that parents may not refuse or opt a child out of participating in state mandated assessments.

Tennessee requires student participation in state assessments by virtue of both state and federal laws which mandate such for accountability purposes. These statutes specifically reference the expectation that all students enrolled in public schools in Tennessee will complete annual assessments as part of the state's academic standards that define what knowledge and skills students should acquire across various grades and subjects.

Parents do have the constitutional right to direct their children's education, which is why parents in Tennessee and other states have many educational options from which to choose (e.g. private school, home school, public school, etc.). However, once parents select public school for their children's education, there are many aspects of the content and instructional programs that are mandated by law.

Except for situations where the Tennessee General Assembly has specifically provided the right to opt out in the law, such as the family life curriculum, parents and/or students may not opt out of state mandated content or instructional programs, including assessments. Similarly, there is no provision in federal law authorizing parents and/or students to opt out of mandated assessments. Therefore, LEAs are not authorized to adopt policies allowing such. In addition, if an LEA offers alternate activities, such as study hall or computer lab, for students whose parents refuse to have them participate in mandated state assessments, the LEA would in effect be allowing students and/or parents to opt out. LEAs should address student absences on testing days in the same manner as they would address a student's failure to participate in any other mandatory activity at school (e.g. final exams) by applying the district or school's attendance policies.

Please do not hesitate to contact me directly at 615-741-2921 or Christy.Ballard@tn.gov if you have questions about this issue or a specific parent inquiry.