

Dr. Rodrigues stated that the Administration sought both local and state legal opinions about the legality of the opt-out provision. According to the legal opinions, the law states very clearly that the statute does not contain an opt-out provision. Therefore, he strongly suggested that letters not be sent out to parents.

Miss Biancheria requested that the item be held to get a legal opinion before we take a vote.

Mayor Petty said he will hold the item to once again get a copy of the legal opinion.

Response:

The legal opinion provided by the DESE on February 20, 2014, is attached. It concluded that PARCC field-testing was part of the mandatory statewide student assessment program required under G.L. c. 69, § 11 and that “state law mandates that all students who are educated with Massachusetts public funds participate in the statewide student assessment program, and it includes no “opt-out” provision for parents to remove their children from participation.

On January 29, 2016, the DESE provided additional guidance pertaining to refusals to take an assessment:

As the spring assessment administration nears, please keep in mind that participation in statewide assessments is required of all students enrolled in public schools in the relevant grade levels. The state assessments provide important feedback to families, teachers, administrators, and state policymakers as to where schools are succeeding and where schools and districts need to enhance their efforts.

In some instances, a student may refuse to take a test, either of his/her own volition or at the direction of a parent. In these cases, we ask principals to encourage parents to rethink their refusal and remind them that the assessments are a valuable gauge of their student's and school's progress. We ask principals and test proctors to handle refusals with sensitivity. Students should not be pressured to take the test, nor should they be punished for not taking the test. They may sit quietly and read in the testing room, but if they are distracting others in the class who are taking the test, it would be appropriate to have them move to another location in the school with adult supervision. There is no requirement to provide formal or informal instruction to these students during the test period; having them do homework or read a book is sufficient, provided that the material is separate from the content being assessed in the testing room.

For students who refuse to take MCAS paper tests, no special reporting is needed. If no answer form is submitted for a student or if a blank answer form is submitted, the student will automatically be considered absent. For students who refuse to take the PARCC test on paper or on a computer, the test administrator will need to go into PearsonAccessNext to manage the student's account and mark them as Not Tested, Absent, for each test they refused to take. Additionally, if the student started an online test session before refusal, that test will need to be marked complete by the test administrator. The Department strongly suggests that the test administrator document the student refusal and keep it on record at the school in case questions arise later about the school's participation rate.

In addition, district and school participation rates on state assessments can impact Accountability and Assistance Levels as determined by the DESE.

Any district or school with less than 95 percent participation for any student group on any of the assessments is ineligible for classification into Level 1 and is, at a minimum, classified into Level 2. Any district or school with less than 90 percent participation for any student group is ineligible for classification into Levels 1 and 2.

State law requires that all students in the tested grades who are educated with Massachusetts public funds participate in grade-level MCAS or PARCC tests that correspond with the grade in which they are reported to the Department's Student Information Management System (SIMS). This includes students with disabilities, English language learners (ELLs), and out-placed students. As such, any student who is absent for one or more test sessions will be reported as a nonparticipant and will count against the participation calculation in the aggregate and in any subgroup of which the student is a member, with one exception: for students who are in their first year of U.S. schooling, schools have the option of administering ELA MCAS or PARCC tests to first-year ELL students. However, first-year ELL students must participate in mathematics and science MCAS or PARCC tests for diagnostic purposes. Their results are not included in school and district accountability calculations.



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Mitchell D. Chester, Ed.D.
Commissioner

February 20, 2014

David Perda, Chief Research and Accountability Officer
Worcester Public Schools
20 Irving Street
Worcester, MA 01609

Re: Student Participation in PARCC Field Testing

Dear Mr. Perda:

I am following up on your request to Attorney Joshua Varon of our legal staff. You asked for clarification as to whether parents can decline to have their children participate in field-testing for the Partnership for Assessment of Readiness for College and Careers (PARCC) assessment. In short, participation in the PARCC assessment field test is mandatory and not subject to opting out.

PARCC is currently in the field-testing stage as part of the statewide student assessment program required under G.L. c. 69, § 1I. The answer to your question about the PARCC field test is similar to the response that Attorney Varon emailed to you in June 2013 with respect to MCAS testing: State law mandates that all students who are educated with Massachusetts public funds participate in the statewide student assessment program, and it includes no "opt-out" provision for parents to remove their children from participating.

In November 2013, the Massachusetts Board of Elementary and Secondary Education ("Board") endorsed a two-year PARCC transition plan, under which a sampling of students will participate in a field test during the 2013-2014 school year and districts will choose whether to administer PARCC or MCAS in grades 3-8 during the 2014-2015 school year. Field-testing is an essential step in ensuring that a student assessment program is fair and valid. It is also consistent with the Board's statutory obligations, under G.L. c. 69, § 1I, to "adopt a system for evaluating on an annual basis the performance of both public school districts and individual public schools" and to "update, improve, or refine the assessment system." With the PARCC transition plan, the Board has approved a two-year pilot period for trying out the assessment and gathering data about it to determine whether to adopt PARCC as the Commonwealth's new student assessment system.

Under the field test design, approximately 15 percent of the Commonwealth's students in grades 3-11 were selected as a representative sample of the state. With the possible exception of one school district (not Worcester), each student will participate in either mathematics or English language arts, but not both; and a subsample of students selected will participate in the PARCC

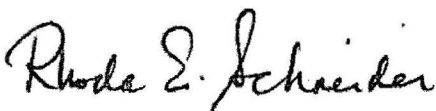
performance based assessment. The Department has offered districts the option in 2013-2014 of choosing not to administer MCAS in a subject to the subsample of students who participate in the PARCC performance based assessment field test in that same subject. This option allows districts to weigh the benefits of additional class time gained by avoiding double testing, against the merits of receiving individual performance scores for those students for the 2013-2014 school year. Students participating in the PARCC field test in one subject will take the non-field test subject in MCAS. In the 2014-2015 school year, districts will choose whether to administer MCAS in both English language arts and mathematics or to administer PARCC in both subjects.

The PARCC transition plan and two-year pilot period provide to a small group of students early exposure to a new assessment system without holding these students personally accountable for the results. Instead, the results will inform the Board in its policy decision, and will provide the Board and Department with the best possible information upon which to evaluate the accuracy, validity, and fairness of questions proposed for a new system of statewide assessment and to make refinements to the assessment as needed. Students, therefore, must participate in the PARCC field test, which is a component of the statewide student assessment program mandated by G.L. c. 69, § 11.

As the Department has explained previously, when the Massachusetts Legislature intends to permit parents to “opt-out” from a specific provision, the Legislature does so explicitly. The statutes and regulations relating to student assessment contain no opt-out provisions. Thus, for the sample of students and schools selected for participation in PARCC field testing, as with MCAS, participation is mandatory. This approach ensures that all students will be tested in all required subject areas during the two-year PARCC pilot phase. It also ensures that after this two-year pilot period, the Board will have the data and information it needs to fulfill its statutory obligation to “update, improve, or refine the comprehensive system” of student assessment in Massachusetts.

I hope this information is helpful to you, Superintendent Boone, and the Worcester school community.

Sincerely,



Rhoda E. Schneider
General Counsel

c: Commissioner Mitchell D. Chester
Deputy Commissioner Alan Ingram
Senior Associate Commissioner Bob Bickerton
Superintendent Melinda Boone