

## Testing opt-out/Refusal guide for New Mexico

Form completed by Joan Citizen

*See additional support for opt out/refusal added on 11/1/13 courtesy of Kris Nielsen, titled [How Do I Refuse the SBA and Other Test?](#) (beginning on page 7 of this document)*

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Join NM Refuse the Test on [Facebook](#) and attend an information and discussion forum in your area. Find more information and get involved at <http://nmrefuse.weebly.com>.

### List of assessments

DIBELS

NMSAP (High School graduation)

NMAPA

SBA

Discovery Education Assessment

Riverside Interim Assessment

Albuquerque School District Benchmark Assessment

The New Mexico High School Competency Exam was first administered to grade 10 students in school year 1987-1988. Public high school students have been required to pass in all of the NMHSCE's six content areas (reading, writing composition, language arts, mathematics, science, and social studies) to receive a New Mexico high school diploma.

The New Mexico Statewide Assessment Program encompasses three assessment systems: The New Mexico Alternate Performance Assessment (NMAPA) is the PED's alternate assessment based on alternate achievement standards. The NMAPA is administered to qualifying students in grades 3 through 12+ with significant cognitive disabilities. The NMAPA is the alternate assessment for high school graduation. The ACCESS for ELLs Assessment is New Mexico's state wide English language proficiency assessment in kindergarten through grade 12. Statewide formative assessments in English Language Arts and Math in grades 4 through 10. The state has approved 3 formative assessments: Discovery Education Assessment, Riverside Interim Assessment, and the Albuquerque School District Benchmark Assessment. Districts may continue to use the NWEA MAP; however, the state will no longer reimburse districts for the MAP test as it did not meet their requirements

New Mexico is a member of the Partnership for Assessment of Readiness for College and Careers (PARCC) and plans to administer next generation assessments statewide in English Language Arts and Mathematics in spring 2015. The RFP provides a contingency to administer the SBA in Reading and Math in 2015 in the event that the PARCC assessment is not available in spring 2015 and 2016. The high school SBA, which is administered in grade 10 (second year of high school-H2), in Reading and Math, is a measure of individual student growth that is used

for the A-F School Rating System, and scores count for high school exit (SBA/High School Graduation Assessment). The SBA/HSGA is administered in grade 11 (third year of high school-H3), in Reading, Math, and Science for accountability, and scores in Reading and Math are counted for high school exit if the student did not pass the H2 test. Students who do not pass the H2 and H3 tests may retest in Reading, Math, and Science in the fall of their senior year (H4). Students who do not pass the H4 SBA/HSGA may submit an alternate demonstration of competency (ADC) to meet high school exit requirements in Reading, Math, and Science. No SBA/HSGA retests are available after the H4 test. The PED anticipates that scores from the PARCC assessments will be applied to high school exit requirements starting in 2015. A rapidly decreasing cohort of students already exited from high school will retest on the New Mexico High School Competency Exam (NMHSCE) through winter 2016. The NMHSCE is replaced by the SBA/HSGA as the State high school exit exam, except for students who are still subject to statute §22-13-1.1, (K), NMSA 1978, which provides NMHSCE retests for five years after a student's exit from high school. New Mexico's transition to Common Core State Standards (CCSS) is underway, and redesigned assessments are an important part of the transition.

In 2013, Grade 3 Standards Based Assessment Bridges to CCSS. The Grade 3 SBA in Reading and Math will be redesigned to emphasize CCSS as much as possible using items in the SBA bank that also align with New Mexico content standards. A redesigned Grade 3 SBA will be provided in English and Spanish. The 2013 SBA in grades 4 through 8 and high school will still be aligned with New Mexico standards. Newly developed CCSS items will be included for field testing in the 2013 SBA for all tested grades. Administration of the Grade 3 SBA will parallel CCSS professional development and instruction in kindergarten through third grade in 2012-2013. CCSS training and instruction for grades four through 12 will begin the following year.

In 2014, Standards Based Assessment in All Tested Grades Bridge to CCSS. The 2014 SBA in all tested grades will contain dually aligned items from the bank and 2013 CCSS field test items. New Mexico will continue to score student performance on the New Mexico standards through 2014 for measuring student growth for the A-F School Rating System. Performance on CCSS items will be reported separately at the state, district, and school levels using measures such as number and percent points possible. CCSS reporting will provide aggregate baseline information for schools to transition to PARCC assessments that will be fully aligned with CCSS in 2015.

New Mexico plans to administer the SBA and HSGA as computer-based assessments in 2014 as part of the transition to next generation assessments in 2015. Districts lacking adequate technology resources for computer-based administration will be provided pencil-and-paper versions of the assessments.

### **Special considerations for the above assessments**

According to Section III ESEA 20 US 6311:

AYP is defined in a manner that provides statistically valid and reliable use of annual objectives for

\*economically disadvantaged children

\*major racial and ethnic groups

\*students with disabilities

\*English language learners

(The SBA is not an accurate, valid or reliable measure of student achievement for these groups)

Requirements of academic assessments:

\*be used for purposes for which assessments are valid & reliable, and be consistent with nationally recognized professional and technical standards (tests are being used to grade teachers and are part of their evaluation - no research or evidence to back this)

\*be used only if the state agency provides evidence from test publishers or other relevant sources that the assessments are consistent with requirements of this section (DIBELS was designed as a screening tool, not a measure of reading ability and/or a requirement to move on to the next grade)

\*multiple, up-to-date measures of achievement (Currently the SBA is the sole measure being used state-wide for teacher and student evaluation by the state. Many districts are also using computer-based MAP testing)

\*provide coherent info about student attainment of the standards (the current assessments do not align with the Common Core Standards. How can they provide coherent info about a student's progress when schools are still in the process of adopting the new standards?)

\*ELL students must be assessed in a valid, reliable manner, in a language and form most likely to yield accurate data. English-only testing required after 3 consecutive years of English instruction. Two additional years can be added to this as warranted (Language and form most likely to yield accurate data is a key phrase that applies to all state testing. If curriculum and tests are not aligned, the tests cannot yield or provide accurate data).

According to Robert Romero, "The federal law does not allow for opting a student out of the accountability assessment (in New Mexico, it the Standards Based Assessment)."

<http://www.ped.state.nm.us/press/2010/Exit%20Exams%209-24-10.pdf>

### **Procedures for opt-out/refusal**

Federal law requires all students be tested in order to qualify for funding for the state. Parents have the right to disallow testing for their children, but will count against a school's AYP under NCLB and NCLB waivers. There is no "opt out" clause so parents/students will have to "refuse" the test.

The only approved allowance that will not count against a schools' AYP is a significant medical emergency This can be mental health, car accident, trauma, car accident, etc.

Parents are required to have their child's physician fill out the medical form found at this link:

<http://www.ped.state.nm.us/AssessmentAccountability/AssessmentEvaluation/2013/NMMedicalExemptionVFINAL.pdf>

Suggestion: bring the form itself to the doctor for signature, not the entire packet as it provides the physician with misleading information.

Parents of children on IEPs can call an IEP meeting to document their desire to disallow testing on the grounds that the state assessment system will not likely provide accurate data on their child's academic progress. Members of the IEP team will try to convince parents that their child must participate in the assessment, but parents can use the IEP process to opt out on the grounds of invalidity and inaccuracy.

Parents of ELL children can use the above section from the ESEA to opt out on the grounds that their child is not being assessed in a language and a form that is likely to yield accurate results.

### **Urgency for opt-out/refusal**

Budget issues - most districts are being forced to slash their budgets. The state's error with the Federal Government related to Special Education, is further causing budget cuts to districts. The PARCC assessments will require the purchase of computers and software in order for students to take them - current equipment is not compatible, further adding to their budget constraints. Poverty factor: NM's poverty factor means many students arrive at school lacking foundational skills and/or knowledge to perform on a par with other states and/or populations. Thirty-five cities within the state have significant numbers (30-59%) of low-income households earning \$25,000 or less per year. New Mexico has the highest number of hungry children in the nation (30.2%). Forty-two percent of households in the state are single parents with multiple children living below the poverty line. Sixty-five percent of Latino children live in low-income families. On the Navajo Reservation, 48% of the homes do not have running water, indoor plumbing, and 3/4 of the population do not have electricity. Sixty-five percent of households are at or below the poverty line, with an annual per capita income of \$6,124. Instead of pouring all that state money into testing and updating computers, the state should be using money to address the extreme poverty.

### **Sample language to include in opt-out/refusal**

Test will not likely yield valid, accurate, and reliable information on my child."

"Do not want my child's unreliable data aka test used to evaluate his/her teacher."

"If the state cannot provide a test in my child's primary language, per the ESEA, I disallow the state to test my child in English."

"Test does not align with state standards and so is not valid."

"The Common Core are still being implemented in the state, so tests cannot be aligned with state standards and so are invalid indicators of academic achievement."

### **Sample Opt Out Letter**

Dear \_\_\_\_\_ Administrators,

My child \_\_\_\_\_ is in XXX grade for the \_\_\_\_\_ school year at \_\_\_\_\_ School. I am writing to inform you that I refuse to have my children take part in the NMSA, SBA, DIBELS, PARCC, or any other forms of high stakes standardized testing. I have been advised that religious or even a medical or psychological concern meets the criteria for honoring my request. In lieu of the high stakes standardized tests I request that my child be given alternative forms of assessment to include but not limited to teacher made assessments, projects, and portfolio, to be determined at the discretion of \_\_\_\_\_'s teacher.

Ten years of research and analysis by academic experts working at universities from Penn State to Harvard conclusively prove that high stakes like the OGT testing harms children, undermines and restricts curriculums, and punishes schools that serve the most vulnerable members of our society — kids with special needs and kids in poverty. There are mountains of documentation out there.

I find such testing morally and spiritually unethical, based on the following facts. High stakes testing:

- Is not scientifically-based and fails to follow the U.S. Government's own data on learning.
- Fosters test driven education that is not meeting the individual/intellectual needs of students.
- Presents a racial and economic bias that is beneficial to white middle/upper class students and detrimental to second language students, impoverished students, and students of color.
- Is in opposition to the corrective action in gaps in opportunity and resources sanctioned by the Fiscal Fairness Act.
- Supports complicity of corporate interests rather than democracy based on public concerns.
- Fosters coercion over cooperation with regards to federal funding for public education.
- Promotes a culture of lying, cheating, and exploitation within the school community.
- Has used the achievement gap to foster a "de facto" segregation that has resulted in separate and unequal education for minorities.

Additionally, participating in these tests 1) negatively affects my child social-emotional well being, 2) kills his or her curiosity and love for learning, 3) places developmentally inappropriate and undue and unhealthy stress on him, 4) reduces his or her capacity for attaining new knowledge, 5) replaces his or her higher order thinking with "drill and kill" curriculum, 6) diminishes opportunities for socialization, and 7) diverts funding that could go to fund programs in my child's school to testing companies and publishing companies.

According to the U.S Constitution, specifically the 14th Amendment, I am protected by my rights to religious/spiritual freedom and this federal law supersedes state in regard to parental control over one's child. Under the law, you cannot deny my request.

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)

**In summary, I believe high stakes tests are harmful to my child socially, emotionally and physically,** and diminish his or her opportunities to attend a public school where he has been guaranteed the right to the quality education.

Please think about your role in this and if there is anything you can do to take a stand against the Big Lie that is NCLB and RtTT and high-stakes standardized testing which threaten the future of the children you serve.

Sincerely,

### **Resources and organizations**

Stop Common Core-New Mexico

<https://www.facebook.com/StopCommonCoreInNewMexico>

### **State specific watch-list**

Students First [www.studentsfirst.org](http://www.studentsfirst.org)

ALEC [www.alecexposed.com](http://www.alecexposed.com)

Chiefs for Change <http://chiefsforchange.org/>

National Council on Teacher Quality <http://www.nctq.org/siteHome.do>

Parent Trigger Organizations/Parent Revolution <http://theparenttrigger.com/>

Gates Foundation <http://www.gatesfoundation.org/>

### **Additional or miscellaneous information**

Hanna Skandera still has not been confirmed by the State Legislature as the Education Secretary. She was one of the architects of Jeb Bush's education assessment overhaul in Florida, and is under investigation by several watch groups for paid trips out of state that represent a potential conflict of interest

## New Document to Support Opt Out Refusal in NM as of 11/1/13

By Kris Nielsen

# How Do I Refuse the SBA (and other tests)?

### Let's start with the obvious –

The people who created this awful mess aren't going to just throw up their hands and let us win. There is an obscene amount of money behind these "reforms," and our education leaders are expected to perform well in order to get the investors the returns they expect. No, not smart and happy kids; by investment, we mean privatized public schools, increased sales of testing and intervention products, and technology sales and maintenance. This has nothing to do with how well-adjusted your children are. It has only to do with how well-trained your kids are to do the work that these investors expect of them.

Also, the tests you are refusing (see below) are those that are evaluating your child's teachers and schools—not your child. These tests are invalid, wasteful, and steal valuable instruction time.

So, expect scare tactics. Expect threats. Expect PED, some superintendents, and even some principals and teachers to throw every lie, fib, and nightmare scenario at you. And be ready to let them bounce off. If you hear one that is particularly worrisome, please check with the Facebook group (NM Refuse the Test) or send an email through the website. We will investigate all claims there, and there will be plenty of support on Facebook.

**Understand that the 10<sup>th</sup> and 11<sup>th</sup> grade SBA and EoCs are required for a diploma. We are fighting this policy, and you should too. However, please do not refuse these tests at this time.**

This is for our kids. This is for the future of their education and the future of our state and country.

### Getting Started

The first and most important step is to let your school know of your intent to refuse the state test(s). I strongly advise this, since blindsiding them with a surprise refusal may create defensiveness and a less cooperative environment. Speak to your child's teacher(s) about your decision. You may be surprised to know that many of them support your decision wholly. Check the NM Refuse the Test Facebook page or website to find sample letters to use when advising your school and district of your decision. If you are more comfortable writing your own refusal letter, that's probably even better. Putting a personal touch on it makes it stronger. Give a copy to the school principal, each teacher, and the district superintendent (and the press, if

you're so inclined). The school will most likely give you the Parent Refusal Form to fill out and return. Return that as quickly as possible.

According to the assessment program manual, districts are expected to meet with refusing parents to attempt to change their minds. Handle this as you are comfortable. If you hear any of the aforementioned lies, threats, or cons, this will be the place. Take good notes. Record the conversation if it is permissible. We are here to help.

*IMPORTANT NOTE: Remember, this is your child you are standing up for. You are never "requesting" a refusal; you are "informing" those concerned of your decision—the decision you've already made. Do not "request." A request is always denied.*

### **During the Testing Days**

If anything is going to get messed up, it's on testing day. School staff are on a tight schedule and are expected to make everything run as smoothly as possible. They risk sanctions from the state for simply miscounting something.

To make things go more smoothly for them, remind them a week in advance of your decision and confirm that alternative education activities have been arranged for refusers. Get this in writing, if possible.

On the day of the tests, make sure your child has a note from you with them at school (you can use your original refusal letter) and it is easily accessible. Some schools may require that your child sit through the test administrator's instructions before removing him or her, simply because this is how the state law is interpreted. Make sure that your child knows not to touch the test, at all! When the students begin testing, tell your child to wait patiently, keep hands and pencils off the test, and sit quietly until removed from the classroom. (Many parents suggest not sending your child to school with a pencil at all.)

### **After the Test**

Once everything is said and done, the best thing to do is take a deep breath and celebrate your victory. However, remain vigilant. Continue to monitor the NM Refuse the Test website and Facebook group for developments, stories, and actions. To make this an effective boycott, we have to remain active and strong, and we have to be ready to justify our actions to our schools, other parents, and even the press.

Trust us, the press loves this kind of thing!

Take part in rallies, protests, and town hall meetings. Speak at your board of education meetings. Keep the momentum alive and the pressure on. There is no doubt that the powers that be will attempt to discredit the movement or even parents as a group. Be ready to make your voice heard.

We are doing this for our kids. That's all that matters.

## **Refuse these Tests!**

- **New Mexico Standards-Based Assessment (Grades 3 – 8)**
- **New Mexico Alternative Performance Assessment (Grades K – 8)**
- **End-of-Course exams (Grades 3 – 8)**
- **DIBELS (Elementary)**
- **Discovery Education, NWEA MAP, and Riverside Testing**
- **Any test that is used to evaluate your child’s teachers or school (ask school personnel)**