



Response to Legal Memo on Opt-Out Decision - Executive Summary

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Below are summary responses to the incomplete and somewhat misleading discussion of the potential consequences from the Lee County School Board attorney's letter regarding three of the most important issues – effects on students, teachers/principals, and on funding - after the Board's decision to opt out. The full analysis is available at <http://bit.ly/1rfPkry>

1. **Graduation Issues** – Alternatives to the federally and state mandated tests [F.S. 1008.22(3)(a)] and end of course exams [F.S. 1003.4282] already exist in statute that would legally allow graduation with a standard diploma.
2. **Course Credits Involving End of Course Exams** - The statute is ambiguous about whether the earning the comparative score replaces the 30% requirement for a student's final grade and Algebra I passage and course credit for graduation with a standard diploma. [[F.S. 1003.4282](#)] There are no alternative tests for other state mandated EOCs that consist of 30% of the final grade.
3. **Third Grade Retention** - Florida statute and State Board of Education rule allow third grade students to submit a portfolio or take alternative assessments to avoid mandatory retention [F.S 1008.25(6)(b) and Rule 6A-1.094221]
4. **Opportunity Scholarships** – These are based on the school grading system which in turn is based on the state tests, for which there exist the alternatives already discussed above. Additionally, with the school grading system is in chaos with severe questions about its validity and reliability, the assessments not being counted toward school grades for at least another year and **the** Florida School Boards Association asking for longer, and very few schools in Lee County meeting the qualifications outlined in statute to qualify for their students to receive opportunity scholarships, a reasonable alternative could easily be developed in policy, rule or legislation.
5. **Effects on Teachers and Principals** – The same alternatives available in statute and the same problems with the school grading system described above for students answer the concerns for employees.
6. **Special Education Funding** – Alternative assessment possibilities exist in both federal [Public Law 108-466, Section 6312(a)(16) (IDEA)] and state statute F.S 1008.25(6)(b)].
7. **Federal No Child Left Behind Funding & Waivers** – Besides being a major violation of the Tenth Amendment to the U.S. Constitution; provisions of both No Child Left Behind [Public Law 107-110, Title I, Section 1111(b)(3)] and the waivers are selectively and arbitrarily enforced, the conditional waivers are illegal and the incentivizing of Common Core and the federal assessments through the waivers and Race to the Top are in violation of three federal statutes.
8. **State Funding** – It is not very likely that elected legislators who face constituents seeking relief from the out-of-control testing will sanction other elected officials who are following the Constitutions and listening to their constituents if the appointed State Board refers incomplete and biased information to the legislature about non-compliance. There are legal, constitutional and political reasons why the State Board of Education would be in error for withholding money from Lee County or any other district that asserts their local autonomy and listens to their constituents.
9. **Constitutional and Statutory Violations of Current Testing System** – These are outlined in our paper, *Constitutional and Statutory Violations of Current State and Federally Mandated Student Assessment Program* (available at <http://bit.ly/1AfUecY>). These include violations of the Fourth and Tenth Amendments to the US Constitution and Article IX, Section 4(b) of the Florida Constitution; violation of the federal General Education Provisions Act, the Elementary and Secondary Education Act, and the Department of Education Organization Act, all of which declare state and local control of educational programs; and violation of Florida statutes regarding implementation of the testing system [F.S. 1008.22], technological load testing [F.S. 1003.41 & 1008.22], and prohibition on practicing psychology or school psychology without a license [F.S. 490.002]

DISCLAIMER: This is intended as a policy response and for information purposes only, and does not constitute legal advice.