

## Testing opt-out/Refusal guide for RHODE ISLAND

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### List of Assessments

Rhode Island uses The New England Common Assessment Program (NECAP) tests, designed to measure student performance on grade level expectations (GLE) and grade span expectations in Reading, Writing, Mathematics, and Science.

The new statewide assessment The Partnership for Assessment of Readiness for College and Careers (PARCC) will be implemented starting in the 2014-2015 school year. Please note that the Science GSEs are still in effect and that the Science NECAP will take place as scheduled.

According to RIDE:

Under the No Child Left Behind Act, public schools are accountable for all students. Therefore, Rhode Island's "New England Common Assessment Program" (NECAP) provides that "All students enrolled in the school as of October 1, 2011 are required to participate in the NECAP assessments" except for 1) students who completed the alternate assessment for the 2010-2011 school year; 2) recently-arrived Limited English Proficiency (LEP) students first enrolled in any U.S. school after October 1, 2010 (Reading and Writing tests only); and 3) students who have state-approved special considerations.

In Rhode Island, state-approved special considerations are for cases involving medical issues, a personal crisis, a family emergency, or alternate assessment students enrolling after the alternate assessment registration deadline. Special consideration request forms are available on the RIDE website and must be completed and submitted by the district Superintendent's office. Details about the process for applying for special considerations for exemption from testing are explained in the document entitled, "2011-2012 State-Approved Special Considerations for Statewide Assessments: Guidelines & Forms," which can be found on the RIDE website.

### NECAP SCHEDULE

Reading, Mathematics

*Grades Tested:* 3, 4, 5, 6, 7, 8, 11

*Administration Dates:* Oct. 1-23, 2013

Writing

*Grades Tested:* 5, 8, 11

*Administration Dates:* Oct. 1-23, 2013

Science

*Grades Tested:* 4, 8, 11

*Administration Dates:* May 6 - 23, 2013

## **ADDITIONAL TESTS:**

In addition to the NECAP, Rhode Island Department of Education (RIDE) supports the administration of a number of other specific assessments, including:

### **National Assessment of Educational Progress (NAEP)**

Its major goals are to measure student achievement and report change in performance over time. NAEP provides results for states and the nation as a whole but does not provide scores for individual students or schools. Participation in NAEP mathematics and reading in grades 4 and 8 is mandatory for states and districts receiving Title I funds, pursuant to federal law. Most elementary and all middle schools in our state participate in NAEP.

### **Developmental Reading Assessment (DRA)**

The Developmental Reading Assessment (DRA) measures students' reading accuracy, fluency, and comprehension. Participation in the DRA in Rhode Island is required for those schools that do not administer the grade 3 NECAP reading assessment in October. DRA is given to students in Kindergarten and 1<sup>st</sup> grade during the month of May.

### **Rhode Island Alternate Assessment (RIAA)**

The RIAA assesses content knowledge through a series of Structured Performance Tasks. These tasks also incorporate and promote enhanced capacities and integrated life opportunities for students with moderate, severe, and profound disabilities.

*Content Areas (Grades Tested):* Reading, Mathematics (2, 3, 4, 5, 6, 7, 10) Writing (4, 7, 10) Science (4, 8, 11)

*Administration Dates (ALL Content Areas):* Collection Period 1: Oct. 1 – Nov. 13, 2012 Collection Period 2: Jan. 7 – Feb. 1, 2013 Collection Period 3: March 4 – Apr. 5, 2013

### **ACCESS for English Language Learners**

Rhode Island requires that the English language proficiency (ELP) of all English language learners (ELLs) be measured annually with the ACCESS for ELLs. 2012-2013 ACCESS test administered between Jan. 17 and Feb. 14, 2013.

### **Technology Assessment**

The 21st Century Skills Assessment, is given to 8<sup>th</sup> graders. It is a blend of interactive, performance-based questions and multiple choice, knowledge-based questions.

### **Advanced Placement (AP) exam**

Advanced Placement examinations are taken each spring at the end of year-long courses that are designed to provide college-level curricula. Many colleges and universities grant credits and/or advanced placement based on AP scores.

Students identified as English language learners (ELL) are exempt from taking the NECAP

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Reading/Writing assessments if they entered the U.S. after October 1, 2011; however, they are not exempt from the NECAP Mathematics and NECAP Science assessments. Therefore, ELL students must take the Mathematics and Science assessments regardless of when they entered the U.S. In addition, ELL students must also participate in the ACCESS for ELLs<sup>®</sup> test (RI's English language proficiency test).

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

All non-exempt students who do not have a RIDE-approved special consideration request form must take an applicable NECAP test if the student is attending school during the testing window (October 3-25, 2011 for NECAP Reading, Writing, and Math and May 7-24, 2012 for NECAP Science). Mandatory participation applies to the make-up testing periods as well.

Student growth and achievement is measured in two different ways: statewide testing – currently the New England Common Assessment Program – and student learning objectives, which are decided on by school districts and can vary by classroom.

In 2014, a score of 2/4 or “partially proficient” on the NECAP will be required for High School Graduation. The class of 2014, which took the NECAP as Juniors, will be able to retest during the Fall and/or Spring of their Senior Year or, after they have taken the NECAP twice, they may substitute scores of other approved tests for those of the NECAP.

As of June 2013, State has applied for a waiver to delay the attachment of testing to teacher evaluations. If the state does opt to apply for a waiver it would be given an extra year to begin using student performance as a factor in assessing teachers. The waiver would first have to be approved by U.S. Education Secretary Arne Duncan.

[http://www.wpri.com/dpp/news/local\\_news/mcgowan/ri-undecided-on-applying-for-teacher-evaluation-waiver](http://www.wpri.com/dpp/news/local_news/mcgowan/ri-undecided-on-applying-for-teacher-evaluation-waiver)

See the ACLU report for opting out language and talking points:

<http://oceanstatecurrent.com/analysis/arguments-and-practice-in-high-stakes-testing/>

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

Write a letter of refusal to take the test to be submitted to your local school administrators, citing that high stakes testing “questions your beliefs or practices in morality or religion.”

Submit this letter at the beginning of the school year if possible.

UOO has a sample opt out letter grounded in ethical (non religious) concerns. We also have a sample letter using religious principles.

For the NECAP-According to RIDE:

All students enrolled in a public school district, including students with disabilities and students who are English language learners (ELL), are expected to take part in Rhode Island's statewide academic assessment program in one of the following ways:

1. Participate in the statewide New England Common Assessment Program (NECAP) assessments without accommodations;
2. Participate in the statewide NECAP assessments with accommodations; or
3. Participate in the Rhode Island Alternate Assessment (RIAA), which is available only for students with an Individualized Education Program (IEP) who meet specific criteria.

The only students exempted from testing would be those who are eligible for exemption/special consideration based on state-approved reasons or State-Approved Special Considerations (SASC), which fall within four broad areas:

1. Medical Reasons;
2. Personal Crisis;
3. Family Emergency; and
4. RIAA qualified after RIAA enrollment window closes.

In all cases, the exemptions must be approved by the Director of Instruction, Assessment, and Curriculum at the Rhode Island Department of Elementary and Secondary Education (RIDE). All SASC requests, which must be submitted online via eRIDE by the superintendent's office, will be acknowledged with an email receipt to the superintendent. For requesting student exemption from state testing via the eRIDE system, please see **Guidance on How to Request Exemption from NECAP or RIAA via eRIDE** [PDF, 547KB].

Please refer to the "**State-Approved Special Considerations for Statewide Assessments: Guidelines & Forms**" document (on the 'Guidance and Forms' tab, and also on the eRIDE site) for details.

State Approved Special Considerations can be found at:

[https://www.eride.ri.gov/eride2k5/SASC/docs/Special%20Consideration%20and%20Exemption%20Requests%20for%20Statewide%20Assessments\\_2012-2013%20Guidelines%20and%20Forms.pdf](https://www.eride.ri.gov/eride2k5/SASC/docs/Special%20Consideration%20and%20Exemption%20Requests%20for%20Statewide%20Assessments_2012-2013%20Guidelines%20and%20Forms.pdf)

Important Dates for Special Consideration (SASC)/Exemption available at:

[https://www.eride.ri.gov/eride2k5/SASC/docs/Special%20Consideration%20and%20Exemption%20Requests%20for%20Statewide%20Assessments\\_2012-2013%20Guidelines%20and%20Forms.pdf](https://www.eride.ri.gov/eride2k5/SASC/docs/Special%20Consideration%20and%20Exemption%20Requests%20for%20Statewide%20Assessments_2012-2013%20Guidelines%20and%20Forms.pdf)

Conditions that DO NOT qualify for exemption:

Medical Fragility – All "medically fragile" students are expected to participate in statewide assessment unless a significant and documented medical emergency exists in addition to medical fragility

District-provided home-based educational programs (student remains enrolled in district)

Pregnancy

Students with acute, short-term minor illnesses or injuries

Students placed in correctional facilities

Students receiving educational services at an out-placement facility

Student or Parent refusal to test  
Mental health conditions that permit students to receive instruction

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

44 percent of all students across the state did not score high enough on the NECAP to ??  
Regarding the new NECAP graduation requirement: 44% have graduated under the current requirement. [text missing?]Seventy-one percent of black students and 70 percent of Latino students in Rhode Island did not score high enough last year to have graduated, and in Providence, 86 percent of students with disabilities in Individualized Education Programs and 94 percent of students with limited English proficiencies would not have graduated. Furthermore, according to Tamargejae Paris, a junior in high school and a member of PSU, “the NECAP was not designed to be used as a high-stakes test. The makers of the NECAP themselves have said that the test should not be used as a graduation requirement.”  
<http://seattleducation2010.wordpress.com/2013/01/30/rhode-island-students-call-on-governor-to-stop-high-stakes-testing-policy/>

#### **In General:**

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, data collection of student's private information cannot be guaranteed security or that it will not be abused in some way by third party entities.

Low/poor test scores, which are likely to occur with more frequency with Common Core and PARCC will be used to fire teachers, create more online learning scenarios even in elementary schools, and close more public schools to be replaced with for profit charter schools.

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

The RIDE policy does not allow exemptions based on a refusal to test. Therefore no “exemption” will be granted on these terms. Parents/student will have to state that they are REFUSING the test rather than requesting an exemption.

There are no known cases of anyone opting out in RI yet.

Use language of the Constitution to ground your case, citing the following:

#### **Supreme Court Decisions and Parental Rights**

Parental rights, especially in the area of education, are broadly protected by United States Supreme Court decisions. The U.S. Supreme Court has repeatedly held that parents have the fundamental right to direct the upbringing and education of their children.

In *Pierce v. Society of Sisters*, 268 U.S. 510, 535 (1925), the U.S. Supreme 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.”;

In recognition of both the right and responsibility of parents to control their children’s education, the U.S. Supreme Court has further 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 obligations the State can neither supply nor hinder.” *Prince v. Massachusetts*, 321 U.S. 158, 166 (1944);

The U.S. Supreme Court has also recognized 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 to the U.S. Constitution and 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, 401 (1923).

### **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 NECAP’s, 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 MSA 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,

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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)

*(Sample-Additional religious opt out clause optional)* Under the law you must get 95% of kids tested. But it’s wrong. It is all based on lies and deceit and greed and corruption. My faith demands that we must fight against this. But to continue to participate in this corrupt farce is to undermine the very core of public education. Those pushing for ever increasing testing and “accountability” have made their agenda crystal clear: school closings, vouchers and eventually privatization, turning over education to for-profit companies. Private schools run by the Catholic Church and the Friends Council on Education are not for profit; they do not participate in this testing; their students receive a great education. For-profit schools run by large Educational Management Organizations (EMOs) have a dismal record, but that is the next step as more and more schools fail to meet AYP as we approach 2014. Eventually all schools will be closed down, reorganized and ultimately turned over to private for-profit EMOs. We are told that private for-profit companies can do a better job than you and others who are committed to public education because of the free market. The free market resulted in scandals ranging from Halliburton and Blackwater in Iraq, to the Enron debacle, to the recent outrage in our own backyard with private for-profit prisons for kids. When our tax dollars are involved, greed and corruption run rampant in the “free market.”

**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**

Kelvis Hernandez, a Providence Student Union member. In February, members of the Providence Student Union staged a die-in to dramatize how using NECAP as a graduation test could snuff out opportunities for as many as 40% of Rhode Island and 60% of Providence high schoolers. <http://www.fairtest.org/test-opposition-surges-across-nation>

Steven Brown, the Rhode Island ACLU's executive director  
Karen Feldman, director of Young Voices

## **State specific watch-list**

Commissioner of Education Deborah Gist is a member of Jeb Bush's ultra-conservative Chiefs for Change, which supports test-based accountability, charters, vouchers, and other market-based strategies.

## **Additional or miscellaneous information**

ACLU is currently fighting policy in RI <http://www.riaclu.org/legislation>

### **High Stakes Testing (H 5277, S 0117)**

The ACLU of RI is again working with student and education groups to stop high-stakes testing from keeping otherwise qualified students from graduating. In 2014, Rhode Island is scheduled to begin using standardized testing as a zero-sum graduation requirement. Civil rights and advocacy groups have noted such a test would prevent approximately 90% or more of special education, limited English proficient, economically disadvantaged, Latino or African-American students from graduation. Sponsored by Representative Eileen Naughton and Senator Harold Metts, this legislation does not bar the use of standardized testing, but requires such tests be used only for their intended purpose of identifying struggling students and districts in order to provide intervention. The ACLU testified in support of this legislation before the House Health, Education and Welfare Committee (H 5277) in February, and before the Senate Education in April (S 0117). In June, the ACLU and other groups testified before the Senate Education committee in opposition to a bill (S 968) that was ostensibly put forward to address some of the concerns that have been raised about high-stakes testing, but that in fact only codifies existing testing provisions in to law.