

A lawyer friend of mine who lives here in Orange County and stays abreast of education issues, has looked at the letter and informed me, not as legal advice, but just as a fellow parent, of her take on it. She feels that if this were her own child, and she received this letter, as long as she were confident that her child had performed reasonably well during the year (a C+ average or better in reading and math), she would have no problem opting out, even after receiving this letter. To her, there is simply not enough legal meat in the OCPS lawyer's letter – and it was rather easy for her to read between the lines in his message. In short, there was a lot of tough talk in the letter, but not much else.

RE: OCPS Response to Parent's Opt Out Letter, dated April 4, 2013

1. "...should you instruct your child to refuse the test, they will be asked to sit quietly with the test book closed until the 70-minute session is concluded. The school will then be instructed to mark the test as Do Not Score."

Nothing wrong with a Do Not Score. She suspects it would be an uphill battle to try to arrange for other activities, because it would be too easy for the school or district to argue that the other activities are not allowed during standardized testing. (Can't have child simply read a book because all books are to be put away. Can't have child get up and leave to go somewhere else, because that is disruptive to other children.) Perhaps the best bet would be to try to allow child to have completely plain paper out. If the students are allowed completely plain paper during the test, they could entertain themselves by drawing.

2. "Needless to say, the student will not receive a passing score."

Your child will not receive a failing score either. Your child will receive NO SCORE. Good. Empty scare tactic.

3. The Failure to meet the required testing levels of the FCAT or failure to participate in FCAT testing, may have multiple results, including the student being placed in remediation the following school year or mandatory (grade) retention of the student.

Correct. IF the student can't otherwise show a satisfactory portfolio of work. And think about it, the teacher does NOT want to make your child's work seem worse than it was, because that would make him/her look bad. Neither does the principal, because that will make the school look bad. This "portfolio" of work isn't anything magical. It's just the tests and assignments your child worked on during the year. And it doesn't have to be all of the student's work. Just the normal sampling of items that the teachers routinely keep will do. And if the student has already taken FAIR testing, which many have, I bet that would work as the alternative for reading.

...please be aware that OCPS instruction and curriculum is not necessarily tailored to obtain passing results for those alternative tests,

Scare tactic.

Furthermore, promotion is not guaranteed through either option but will require at a minimum, a thorough review by the teacher, the principal, and possible district approval.

This is correct. However, these consequences are possible regardless of whether the student takes the test or not. The question is - Can my child and

his/her teacher provide a satisfactory portfolio of my child's work so that he/she will be promoted?

4. ...there are separate provisions in Florida Law regarding truancy... The school would have to initiate the report of truancy, and it would have to be investigated. In practice, this would only occur if the school was unaware of the reason for the child's absence. The school will be well aware that the child is not attending due to FCAT testing and DCF would not touch that with a ten foot pole.

<http://www.flsenate.gov/Laws/Statutes/2012/984.151>

984.151 Truancy petition; prosecution; disposition.—

- (1) If the school determines that a student subject to compulsory school attendance has had at least five unexcused absences, or absences for which the reasons are unknown, within a calendar month or 10 unexcused absences, or absences for which the reasons are unknown, within a 90-calendar-day period pursuant to s. [1003.26\(1\)\(b\)](#), or has had more than 15 unexcused absences in a 90-calendar-day period, the superintendent of schools may file a truancy petition.

Therefore, it would be a very good idea for the parent to let the school know in writing in advance that their child would not be attending due to opposition to FCAT testing.

On April 2, 2013, I spoke with Ms. Williams, Assistant to Victoria Ash, Bureau Chief of the FLDOE Bureau of Curriculum and Instruction. She referred to this document:

<http://fcat.fldoe.org/fcat2/pdf/s12uf2r.pdf> - Page 10.

Understanding FCAT 2.0 Reports 2012 - Codes for No Date Reported

The following abbreviations may appear on some student and educator reports:

NR (Not Reported) indicates that no data are reported for the student because he or she answered too few questions for that subject or the test was invalidated. Reports containing student results will indicate that no data are reported for one of the following reasons:

- NR2—Did Not Meet Attemptedness Criteria
- NR3—Marked Do Not Score
- NR5—Off-Grade Tester
- NR6—Duplicate Record
- NR7—FDOE Hold
- NR8—FDOE Invalidated

If a student receives an NR code, the parent or student should consult the student's designated guidance counselor.

Ms. Williams confirmed that if a student refuses to test, his/her test would be reported back to the FLDOE as an NR2 - Did Not Meet Attemptedness Criteria (Refused), and the test would be invalidated. If a student is absent from testing, he/she will be pulled for subsequent makeup tests. However if a student's test were marked "NR2", that student would not be required to take the make up test. As Mr. Rodriguez is saying NR3, the parent may want

clarification from the DOE as to whether an NR3 is handled differently from an NR2.

Victoria Ash, Bureau Chief
FLDOE - Bureau of Curriculum and Instruction
325 West Gaines Street
Tallahassee, Florida 32399-0400
Phone: (850) 245-0513

This parent may consider writing a reply to Mr. Rodriguez' letter simply stating:

Dear Mr. Rodriguez:

Thank you for your prompt reply. We do not want our child, _____ to participate in any high stakes standardized testing and _____ will be politely refusing to take the FCAT.

The FLDOE Bureau of Curriculum and Instruction (*April 2, 2013 – telephone call with Ms. Williams, Assistant to Victoria Ash, Bureau Chief*) has confirmed that “if a child refuses to take the test, that test will be reported back to the DOE as an NR2 – Did Not Meet Attemptedness Criteria, the test will be invalidated, and the child will not be required to take the make up test, as the child will not have been *Absent*.”

Thank you in advance for your cooperation. We look forward to enjoying the remainder of the school year.

Sincerely,

**cc: Principal
Teacher**