



New Mexico State Senate

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March 31, 2016

The Honorable Hector Balderas
Attorney General of the State of New Mexico
P.O. Drawer 1508
Santa Fe, New Mexico 87504-1508

Re: Request for Formal Legal Opinion

Dear Attorney General Balderas:

Since the 2015 New Mexico Regular Legislative Session, issues have come to my attention dealing with the Partnership for Assessment of Readiness for College and Careers standardized tests (herein referred to as "PARCC" or "tests") and concerns with specific measures against New Mexico students and parents/legal guardians/educational decision makers in our public and charter schools.

On behalf of myself in my capacity as a New Mexico State Senator, the negatively impacted students and their parents/legal guardians/educational decision makers, I am requesting a Formal Opinion from the Attorney General's Office to clarify if they can legally, under applicable federal and state law, opt their students out of taking the PARCC exams, and, if so, under what circumstances.

I believe the following six specific concerns need to be addressed:

- Possible violation of students' rights to speech and assembly under the First Amendment to the US Constitution.
- Suspension of students without just cause or due process under the Fourteenth Amendment to the US Constitution.

- Encouragement of students to violate state truancy laws by being asked to stay home rather than take the tests and lower test score averages for their schools.
- Threatening teachers and principals with disciplinary action, up to and including dismissal, if their students didn't agree to take the tests.
- Misrepresentations to students and parents/legal guardians/educational decision makers regarding the consequences of opting out of PARCC, including failure to provide an accurate legal basis supporting a parent/ legal guardian/ educational decision maker's right to opt their children out of testing.
- Failure to reasonably accommodate special education students in accordance with their approved Individual Education Plans (IEP's).

I am aware that your legal analysis may be impacted by the recent enactment of the federal Every Student Succeeds Act replacing No Child Left Behind.

Your time and attention in reviewing these important issues can help guide the New Mexico Public Education Department (PED) and the State's 88 School Districts, clarify common misconceptions about the rights of parents/legal guardians/educational decision makers and illuminate the fair boundary between PED and protected parental and student rights.

Please let me know if you have any questions.

Sincerely,



Howie C. Morales
State Senator