

Guide to Refusal Policies and How to Handle Each Situation

If a school will not verbally or in writing give you their refusal policy, (some are afraid to have an actual policy spelled out, or deny that there could be any such thing) they should still be willing to give you refusal PROCEDURE.

"Refusal: Students who refuse to take the entire test must be reported at the local level with a final score of "999" and a standard achieved code of 96, indicating refusal, whether or not there are any response records. Assessment records for these students do not move to Level 2 of the Student Information Repository System. These students will be considered to have "no valid test score" and will be counted as not tested in verification reports and for accountability calculations. Students who refused to take one or more but not all sessions or parts of the test will receive no credit for the session(s) or part(s) they refused to take, and a scale score and performance level will be calculated based on the questions answered."

http://www.p12.nysed.gov/irs/sirs/2013-14/2013-14SIRSMannual9-4_20131206.pdf

1. School accepts parent refusal letter and students are taken to alternate location on testing days and allowed to read quietly. Tests are not placed in front of children. Children refusing are escorted out of testing room before tests are administered.

Response: a big fat thank you to the school for honoring parental rights and treating our children with respect. Refusal letters should be sent in as early as possible to aid the school in preparing alternate locations. A positive letter about your child's teacher can accompany the refusal letter to be put in the teacher's file. This may counteract possible negative effects of a smaller testing pool on the teacher's evaluation.

2. School accepts parent refusal letter, students are kept in the testing room and allowed to read quietly. Tests are not placed in front of the children refusing.

Response: A thank you to the school for honoring parental rights and treating our children with respect. Refusal letters should be sent in as early as possible. A positive letter about your child's teacher can accompany the refusal letter to be put in the teacher's file. This may counteract possible negative effects of a smaller testing pool on the teacher's evaluation.

3. Tests are placed in front of student and student must verbally refuse to the proctor. Students are kept in the testing room and allowed to read quietly or taken to alternate location to read.

Response: Attend district BOE meetings to work on changing policy. The goal is #1 or 2 above. You may want to get signatures on a petition to change policy and present petition at a BOE meeting. Point out that if they want students to verbally refuse in front of other students, they have to accept "band wagon" refusals (students who hear their friends refusing and say "me too, I'm refusing!"). If the policy does not change, meet with your child's teacher before test day. Explain to the teacher in front of your child "I am not allowing Johnny to take these tests, and Johnny was worried you would be upset." We are working with teacher unions for teachers to use these opportunities to reassure the student that they are fine with the parent's decision. Coach your child to say "my mom (or dad) won't let me take this". This takes ownership of the refusal off of your child. You can also request that the school accept a note handed to the proctor instead of a verbal refusal. The note can say "I refuse" or "my child does not have permission to take this assessment". A sticky note that

stated "I refuse" placed on the child's shirt was used successfully by some parents last year as well!

Student verbal refusal: there is no legal requirement for a student to verbally refuse. Any indication is allowed as of the present moment. There does not have to be any record of the type of refusal the student or parents gave.

page 63 of the SIRS manual

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"Students who refuse to take the entire test must be reported at the local level with a final score of "999" and a standard achieved code of 96, indicating refusal, **whether or not there are any response records.**"

4. School accepts parent refusal letter and students do not have to verbally refuse, however, students are kept in the testing room and denied the right to read a book. (aka "sit and stare") Students are expected to sit quietly doing nothing throughout all testing hours/days.

Response: Attend district BOE meetings to work on changing policy. The goal is #1 or 2 above. Start by sending letters (attached below). You may want to get signatures on a petition to change policy and present petition at a BOE meeting.

If policy does not change, on testing days some alternatives are:

1. Shortly after refusal, pick your child up to avoid the "sit and stare". The child cannot be given a makeup after they have successfully refused. The child can be brought back after 2 hour testing window is complete, or remain out. If they were in attendance for the morning they cannot be marked absent. Many parents formed groups last year and took turns picking up groups of children.
2. Stay absent for all 6 normal testing days. When they return to school, child refuses the test and is immediately brought back to class. If a school attempts to keep a child from normal class time for make-up sit and stare time, the school is now in a legally compromising situation as they are denying the student the "right to an education", as protected by law. It could be argued that this action would have to follow the rules of an in school suspension, which requires the child to be provided the "rights to a regular school program".

Policy on students being allowed to read after completion/refusal - page 9 of the testing guides

<http://www.engageny.org/sites/default/files/resource/attachments/grade-3-ela-guide.pdf>

There is a similar guide for each grade 3-8. All essentially have the same language.

"Students who finish their assessment before the allotted time expires should be encouraged to go back and check their work. Once the student checks his or her work, or chooses not to, examination materials should be collected by the proctor. After a student's assessment materials are collected, that student may be permitted to read silently.* This privilege is granted at the discretion of each school. No talking is permitted and no other schoolwork is

permitted."

5. Students have to verbally refuse, are kept in the testing room, and denied the right to read a book. (aka "sit and stare") Students are expected to sit quietly doing nothing throughout all testing hours/days.

Response: This is the worst of the worst cases and a complete disregard of parental and student rights as well as unfairly punitive against the very students they claim to be serving. Attend district BOE meetings to work on changing policy. The goal is #1 or 2 above. Start by sending letters (attached below)

You may want to get signatures on a petition to change policy and present petition at a BOE meeting. Point out that if they want students to verbally refuse in front of other students, they have to accept "band wagon" refusals (students who hear their friends refusing and say "me too, I'm refusing!").

If the policy does not change, meet with your child's teacher before test day. Explain to the teacher in front of your child "I am not allowing Johnny to take these tests, and Johnny was worried you would be upset." We are working with teacher unions for teachers to use these opportunities to reassure the student that they are fine with the parent's decision. Coach your child to say "my mom (or dad) won't let me take this". This takes ownership of the refusal off of your child. You can also request that the school accept a note handed to the proctor instead of a verbal refusal. The note can say "I refuse" or "my child does not have permission to take this assessment". A sticky note that stated "I refuse" placed on the child's shirt was used successfully by some parents last year as well!

If policy does not change regarding "sit and stare", on testing days some alternatives are:

1. Shortly after refusal, pick your child up to avoid the "sit and stare". The child cannot be given a makeup after they have successfully refused. The child can be brought back after 2 hour testing window is complete, or remain out. If they were in attendance for the morning they cannot be marked absent. Many parents formed groups last year and took turns picking up groups of children.

2. Stay absent for all 6 normal testing days. When they return to school, (ie. absent Tuesday, Wednesday, and Thursday of the first week of testing, and returns to normal school day Friday and refuses the makeups) the child refuses the test and is immediately brought back to class. If a school attempts to keep a child from normal class time for make-up sit and stare time, the school is now in a legally compromising situation as they are denying the student the "right to an education", as protected by law. It could be argued that this action would have to follow the rules of an in school suspension, which requires the child to be provided the "rights to a regular school program".

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"Students who finish their assessment before the allotted time expires should be encouraged to go back and check their work. Once the student checks his or her work, or chooses not to, examination materials should be collected by the proctor. After a student's assessment materials are collected, that student may be permitted to read silently.* This privilege is granted at the discretion of each school. No talking is permitted and no other schoolwork is permitted."

LETTERS REQUESTING POLICY CHANGE

Letter to "sit and stare" districts

Dear (BOE and Superintendent),

I am writing to you on behalf of several parents who are choosing to have their children refuse the upcoming state assessments. I'm asking that you please allow these students to sit in the back of the room or a separate location and read silently once they have refused these tests. The Educator's Guide to Common Core Test states "Students who finish their assessment before the allotted time expires should be encouraged to go back and check their work. Once the student checks his or her work, or chooses not to, examination materials should be collected by the proctor. After a student's assessment materials are collected, that student may be permitted to read silently." This privilege is granted at the discretion of each school. I ask that you please grant children who are refusing to be allowed to read silently. Having a child sit a do nothing for such a long period of time is unrealistic and some students might become disruptive and a distraction to students who are taking the tests. I am aware of many other districts across Long Island who are permitting students who refuse to either read in class or a separate location, or go down to lower grade classrooms and read to younger students.

I look forward to your response and I am confident that you will make a decision based on what is best for the children.

Thank You,

Letter to a district that is being extremely uncooperative

(intends to force the child to verbally refuse, uses sit and stare, and contends that they will present the test more than once to the child)

Dear Superintendent _____:

I have received your letter regarding my family's decision to refuse participation in all standardized tests/assessments being given this school year, including but not limited to the ELA, math, and/or any local assessments used, in whatever manner, to evaluate my child and/or her teachers.

You (the district) are asserting that "[t]here is not [sic] an option" to opt out. To the contrary; there is: it's called The Constitution of the United States, and it provides that option (in no particular order of importance) on 14th Amendment substantive due process grounds (i.e., my right to nurture, raise, and direct the education of my child, my right and my child's right to personal liberty, my right to protect my child from harm and for my child to be free from harm, and my right and my child's right against unreasonable governmental intrusion), First Amendment privacy grounds, my child's right against Fourth Amendment unreasonable governmental action, and Fifth Amendment rights. In addition, the Ninth Amendment recognizes that there are fundamental personal rights that are protected from abridgment by the government even though not specifically mentioned in the Constitution. Federal statutes also come into play. No Child Left Behind expressly provides: "Parents have the primary responsibility for the education of their children, and States . . . have the primary responsibility for the supporting that parental role." 20 U.S.C. § 3401. Similarly, the federal government has declared that I must be afforded "substantial and meaningful opportunities to participate in the education of [my child]." 20 USC § 6301 (12).

Indeed, my right to refuse to allow the state to compel my child to submit to a standardized test (or assessment) has constitutional dimensions that have been recognized by the Supreme Court of the United States for nearly 100 years. My constitutional right to guide my child's education and to protect my child from harm and exploitation at the hands of government is one of the oldest fundamental liberty interests recognized by that Court. The Court has repeatedly held that because I have the natural inclination to further the best interests of my child, it is I who is the best protector of my child and, therefore, I have the natural right and duty to care for my child and protect her against unreasonable, arbitrary, and capricious governmental action. It is I -- the parent -- not the school district -- who is entrusted with this constitutionally-protected, fundamental right. The Court is emphatic that the State (the school district) has no right to interfere with or hinder my efforts to raise my child, or my efforts -- my affirmative obligation -- to protect my child from harm or exploitation. See e.g. 20 U.S.C. § 6311 (based on the specific requirements outlined in No Child Left Behind, high-stakes testing violates federal law). The Court has stated: "[t]he fundamental theory of liberty upon which all governments in this Union repose excludes any general power of the State to standardize its children [(my child)].... 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 (1925). My child is not "[t]he mere creature of the state." As the Supreme Court has similarly held: "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. Commonwealth of Massachusetts*, 321 U.S. 158

(1944). I have a constitutional liberty interest to direct the upbringing and education of my child. This right, guaranteed by the Constitution, may not be abridged by unreasonable policy. Even the New York Court of Appeals – the highest court of our state – recognizes this interest. The Court of Appeals stated: “It is the natural right, as well as the legal duty, of a parent to care for, control and protect his child from potential harm, whatever the source and absent a clear showing of misfeasance, abuse or neglect, courts should not interfere with that delicate responsibility.” *Roe v. Doe*, 29 NY2d 188 (NY 1971) (emphasis added). Neither should any branch of government. These constitutional, statutory, and common law guarantees do not disappear when my child enters your schoolhouse gate. In fact, the federal government has explicitly provided protection to my child within the school environment. See 20 U.S.C. § 1232h (protecting students from examinations without written parental consent).

To reiterate: the _____ School District does not have my permission to compel my child to take any state / district standardized test or assessment. See 20 U.S.C. § 1232h. Under my guardianship, my minor child will refuse same. In addition, her various tests /assessments will be properly scored as a “refusal,” will be considered “invalid,” and will not be included in the participation rate. See 8 NYCRR § 100.2(p)(1)(xi). New York State Education Department manuals provide explicit instructions on proper coding. These instructions are not discretionary. Your district does not have authority to deviate from them. They require that a “refusal” – along with “administrative error” and “medically excused” – has its own administrative code; it does not get scored as a “0,” “1,” or “2.” Moreover, as with “administrative error” or “medically excused,” a refusal is not deemed a valid score. Any attempt by your school district to otherwise code, score, or deviate from these instructions would constitute a due process violation of governmental procedure. Furthermore, during the administration of any and all make-up tests, my child will continue to receive a free and appropriate public education in her regular classroom environment, along side the rest of her classmates. You are hereby on notice that any state agent who ignores my parental instruction, and/or who compels, harasses, intimidates, or otherwise forces my minor child, or attempts same, in any way, to participate in any standardized test or assessment, and/or who takes any action that causes my child emotional, psychic, and/or physical harm against these express instructions, will be in violation of federal and state constitutional law, statutory law, and common law. I trust there will be no further need for clarification.

Thank you for your cooperation,

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