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GRANT WOODS
ATTORNEY GENERAL

July 31, 1997

The Honorable Mark Anderson
Arizona House of Representatives
1700 W. Washington
Phoenix, AZ 85007-2848

Re: I97-008 (R97-012)

Dear Representative Anderson:

You have requested an opinion as to whether a parent may withdraw his or her child from Arizona's student assessment program. Based upon the Legislature's mandates with regard to statewide essential skills and standardized norm-referenced achievement ("student assessment program") testing, we conclude that only students who are legislatively exempted from testing may be omitted from Arizona's student assessment program.

Background

The Legislature created a comprehensive statewide system of assessing the achievement of public school students through a series of mandatory essential skills tests and a standardized norm-referenced achievement test.¹ Arizona Revised Statutes Annotated ("A.R.S.") § 15-741(A)(2) and (3)² mandate that the State Board of Education ("State Board") adopt and implement statewide (i) essential skills tests to measure pupil achievement in reading, writing, and mathematics in at least four grades that the State Board selects, and (ii) nationally standardized norm-referenced achievement tests in reading, language arts, and mathematics for

¹ The Legislature has specifically exempted from testing children who are instructed in a home school program, while they are receiving home school instruction. A.R.S. § 15-745(A). However, when a child who has been receiving instruction in a home school program enrolls in a public school, the child must be tested (pursuant to Title 15, Chapter 7, Article 3) to determine the child's appropriate grade level. A.R.S. § 15-745(B).

² The legislative directive to the State Board of Education to adopt and implement norm-referenced achievement and essential skills testing is not new. The initial requirement for norm-referenced achievement tests was adopted in 1981, 1981 Ariz. Sess. Laws ch. 1, § 2; essential skills testing was mandated in 1990. 1990 Ariz. Sess. Laws ch. 233, § 8.

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grades three through twelve.³ 1997 Ariz. Sess. Laws ch. 231, § 15. The standardized norm-referenced achievement test must be given annually. A.R.S. § 15-741(B).

The Legislature established standards for the State Board to follow in implementing the required tests. The State Board must ensure that these tests are uniform throughout the State (A.R.S. § 15-741(A)(4)), and are able to be scored in an objective manner (A.R.S. § 15-741(A)(5)), and that the results of the norm-referenced achievement tests are comparable to associated grade equivalents, percentiles, and stanines derived from a multistate sample. A.R.S. § 15-741(A)(6). The Legislature also directed the State Board to establish a fair and consistent method and standard to evaluate norm-referenced test scores from individual schools in a school district and to intervene and assist schools with scores below the acceptable standard. 1997 Ariz. Sess. Laws ch. 231, § 15. The State Board must also annually review district and school scores and offer assistance to districts in analyzing data and implementing intervention strategies. A.R.S. § 15-741(A)(11).

Pursuant to A.R.S. § 15-741(C), local school district governing boards must administer the student assessment program tests adopted by the State Board.⁴ Local governing boards must also report the number of pupils in the grades designated by the State Board who have acquired the essential skills. A.R.S. § 15-741(C)(4).⁵ The State Board annually publishes reports on the results of the student achievement program test scores for the State and every school and school district. A.R.S. § 15-743(A). It also publishes a summary of the reports every five years. *Id.*

The Legislature further mandated that every school distribute an annual report card to parents of pupils enrolled at the school that summarizes the results of the student achievement program test scores for students enrolled at the school during the previous three school years and present a summary of the report at a public meeting held annually at the school. A.R.S. § 15-746(A)(3), (D). The Arizona Department of Education is responsible to develop the standardized report card format and to prepare a comprehensive annual report containing the report cards for each school in the State. A.R.S. § 15-746(B), (C).

³ We have previously recognized the State Board's lack of power over private schools, Ariz. Att'y Gen. Op. 183-029, 181-050, and therefore the mandatory student assessment program testing would not include private school students.

⁴ Charter schools are required to participate in the essential skills tests and the nationally standardized norm-referenced achievement test designated by the State Board. A.R.S. § 15-183(E)(4).

⁵ The Legislature recently amended A.R.S. § 15-741(C)(3) to require local governing boards to file a district assessment plan describing how they will assess pupil progress and depict trends in gains or losses in student achievement in reading, language arts, and mathematics. 1997 Ariz. Sess. Laws ch. 231, § 15.

Analysis

Throughout A.R.S. §§ 15-741, 15-743, and 15-746, the Legislature assigned certain mandatory responsibilities to the State Board and local governing boards for the student achievement program tests. The unambiguous use of the word "shall" in these statutory provisions indicates that the Legislature intended to require each entity to perform the assigned tasks. *See Arizona Department of Revenue v. Trico Electric Cooperative, Inc.*, 151 Ariz. 544, 547, 729 P.2d 898, 901 (1986).

Given the complex scheme and mandatory language of the student assessment program and reporting provisions in Title 15, Chapter 7, Article 3, the Legislature considered the student assessment program to be important to the education of Arizona children, and intended to provide statewide accountability for the use of State monies. In order for the required reports and report cards to accurately reflect the achievement of students, at each school and statewide, the maximum number of students must be tested.

The Legislature has not given individual public school students the option of avoiding the student assessment program tests. The only public school students permitted to forego testing are certain disabled students and students with limited English proficiency who satisfy the statutory prerequisites in A.R.S. § 15-744(A) or (B). It is a fundamental principle of statutory construction that items not included in a list of exemptions to a statute are covered by that statute. *Bushnell v. Superior Court*, 102 Ariz. 309, 311, 428 P.2d 987, 989 (1967). Here, the statutory language strictly limits those who are exempt from the student achievement program tests, which further supports the Legislature's intent that the greatest number of public school students possible be tested.

We note that A.R.S. § 15-102 provides that each local governing board in Arizona, in consultation with parents, teachers, and administrators, shall adopt a policy to involve parents and guardians in the overall education of children enrolled in the schools within the school district. The policy must include procedures for parents to learn about their children's course of study and to review learning materials (A.R.S. § 15-102(A)(2)), and procedures through which parents who object to learning material or an activity that they believe to be harmful may withdraw their children from the activity, class, or program in which the material is used. A.R.S. § 15-102(A)(3)). However, nothing in these statutory provisions allows parents to withdraw children from taking the student assessment program tests.

The student assessment program tests mandated in Title 15, Chapter 7, Article 3, are separate and distinct from the learning material or learning activity contemplated by A.R.S. § 15-102(A). The Legislature says what it means and had it determined that parents could withdraw their children from student assessment program tests, it would have so stated. *See*

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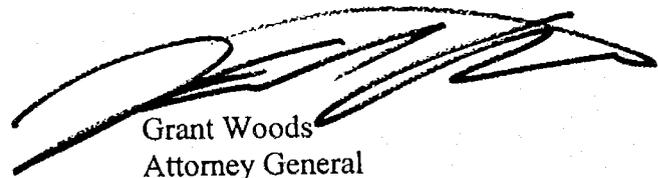
Padilla v. Industrial Comm'n, 113 Ariz. 104, 106, 546 P.2d 1135, 1137 (1976). Likewise, in reviewing the limited statutory scheme that allows parents to remove their children from exposure to learning materials and school activities that they believe are harmful, we are constrained from including in that scheme the right to withdraw children from the student assessment program tests because the Legislature did not provide parents with that right in A.R.S. § 15-102(A) or anywhere else in Title 15. See *City of Phoenix v. Donofrio*, 99 Ariz. 130, 133, 407 P.2d 91, 93 (1965) (courts will not read into a statute something not within the manifest intent of the Legislature as gathered from the statute itself).

To allow a parent to withdraw a student from the legislatively mandated student assessment program testing could lead to manipulation of the testing system: the parents of students who are anticipated to do poorly on the tests could remove their children from the testing process. The unilateral removal of selected students from testing could invalidate the test scores in particular schools, thereby defeating the purpose of the legislative assessment and reporting mandates.

Conclusion

Based upon the Legislature's mandates with regard to statewide essential skills and standardized norm-referenced achievement testing, as set forth in Title 15, Chapter 7, Article 3, Arizona Revised Statutes Annotated, we conclude that only students who are legislatively exempted from testing or are beyond the purview of the State Board of Education may be excused from taking Arizona's essential skills and standardized norm-referenced achievement tests. Exempt students include those instructed in a home school, private school students, and certain disabled and limited English proficient public school students.

Sincerely,



Grant Woods
Attorney General