School districts electing to sanction parents for opting out or refusals to take high-stakes standardized tests may be in violation of the United States Constitution, The Equal Protection Act, and in cases where the student has a learning disability, The Americans with Disabilities Act.

If you feel that your civil rights have been violated, please file a discrimination complaint with the Office for Civil Rights within 180 days from when the offense has occurred. Also, please send a copy of your complaint to Nina Bishop. We are pursuing a class action lawsuit.

Nina Bishop:

3065 Windward Way

Colorado Springs, CO 80917

719-233-1508

nbish@attglobal.net

[To file a complaint with the United States Department of Education Office of Civil Rights:](http://wdcrobcolp01.ed.gov/CFAPPS/OCR/complaintform.cfm)

[Instructions for filing a complaint with the Office for Civil Rights:](http://www2.ed.gov/about/offices/list/ocr/docs/howto.html)

1. **The Civil Right Act of 1964 and** [**The Equal Protection Act**](http://www.judiciary.senate.gov/about/history/CivilRightsAct.cfm)

High-stakes testing and the federal and state imposed sanctions of No Child Left Behind violate the Equal Protection Act. Similar to Brown v. Board of Education in which the Supreme Court determined that segregation established an unequal system. Because income is the scientifically proven number one correlation to test scores, high-stakes standardized testing, like segregation establishes a separate and unequal education system that further prohibits employment for protected classes including race, color, age, and disability.

“Subsequent legislation expanded the role of the EEOC. Today, according to the U. S. Government Manual of 1998-99, the EEOC enforces laws that prohibit discrimination based on race, color, religion, sex, national origin, disability, or age in hiring, promoting, firing, setting wages, testing, training, apprenticeship, and all other terms and conditions of employment. Race, color, sex, creed, and age are now protected classes.”

<http://www.archives.gov/education/lessons/civil-rights-act/>

[http://legal-dictionary.thefreedictionary.com/equal+protection+of+the+law](http://legal-dictionary.thefreedictionary.com/equal%2Bprotection%2Bof%2Bthe%2Blaw)

1. [**Fourteenth Amendment to the United States Constitution**](http://www.law.cornell.edu/constitution/amendmentxiv?quicktabs_10=0#quicktabs-10)

In Meyer,[**9**](http://familyrights.us/bin/white_papers-articles/meyer-pierce_legacy.html#Endnotes#Endnotes) 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**.[**10**](http://familyrights.us/bin/white_papers-articles/meyer-pierce_legacy.html#10#10)

**Amendment XIV**

**Section 1.**

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

<http://www.law.cornell.edu/constitution/amendmentxiv?quicktabs_10=0#quicktabs-10>

Against this backdrop, the Constitution limits the use of state power to diminish parental rights and undermine the family. Although the Constitution does not deal explicitly with parental authority, the Supreme Court has specifically recognized parental rights of custody and control. In the landmark decision of [**Meyer v. Nebraska**](http://search.yahoo.com/search;_ylt=Aq3TL9ah9aUS9ikLN7IT7.SbvZx4?p=Meyer+v.+Nebraska),[**5**](http://familyrights.us/bin/white_papers-articles/meyer-pierce_legacy.html#Endnotes#Endnotes) closely followed by [**Pierce v. Society of Sisters**](http://search.yahoo.com/search;_ylt=Aq3TL9ah9aUS9ikLN7IT7.SbvZx4?p=Pierce+v.+Society+of+Sisters),[**6**](http://familyrights.us/bin/white_papers-articles/meyer-pierce_legacy.html#Endnotes#Endnotes) the Court stated that parents have a substantive due process right to "bring up children."[**7**](http://familyrights.us/bin/white_papers-articles/meyer-pierce_legacy.html#Endnotes#Endnotes) Although these cases were handed down in the 1920s they are no mere archaisms, but rather have withstood the test of time. Indeed, Justice Brennan has remarked of Meyer and its progeny: *"I think I am safe in saying that no one doubts the wisdom or validity of those decisions."*[**8**](http://familyrights.us/bin/white_papers-articles/meyer-pierce_legacy.html#Endnotes#Endnotes) The precedents Meyer and Pierce generated have further solidified the principle that parents should have the predominant role in raising their children.

The Court invalidated a state statute prohibiting foreign language instruction to school children, recognizing the right of German-speaking parents to have their children taught German. The Court found that the state's interest in encouraging American ideals by prohibiting the teaching of foreign languages is not great enough to permit infringement of the rights of parents to raise their children as they see fit.[**11**](http://familyrights.us/bin/white_papers-articles/meyer-pierce_legacy.html#10#10) The Court rested its opinion in large part on the rights of parents to control the activities of their children,[**12**](http://familyrights.us/bin/white_papers-articles/meyer-pierce_legacy.html#10#10) concluding that the statute was an interference "...with the power of parents to control the education of their own."[**13**](http://familyrights.us/bin/white_papers-articles/meyer-pierce_legacy.html#10#10)

Two years after Meyer, the Supreme Court in Pierce[**14**](http://familyrights.us/bin/white_papers-articles/meyer-pierce_legacy.html#10#10) invalidated an Oregon statute requiring parents to send their children to public school, holding that the statute *"unreasonably interfere[d] with the liberty of parents and guardians to direct the upbringing and education of children under their control."*[**15**](http://familyrights.us/bin/white_papers-articles/meyer-pierce_legacy.html#10#10) Pierce made clear that the constitutional rights of a parent are not limited to physical custody, but that parents possess the right to direct their child's "destiny."[**16**](http://familyrights.us/bin/white_papers-articles/meyer-pierce_legacy.html#10#10)

The principle enunciated by Meyer and Pierce, that parents have the right to direct the upbringing and education of their children, has survived the many turbulent changes of the last several decades. A line of decisions following Meyer and Pierce further cemented the rights of parents to exercise their own best judgment in raising their children. For example, twenty years after Pierce, the Supreme Court in Prince v. Massachusetts[**17**](http://familyrights.us/bin/white_papers-articles/meyer-pierce_legacy.html#10#10) stated that *"[i]t 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."*[**18**](http://familyrights.us/bin/white_papers-articles/meyer-pierce_legacy.html#10#10)

1. [**Americans with Disabilities Act**](http://www.ada.gov/pubs/adastatute08.htm)
2. Sec. 12112. Discrimination
3. (a) General rule
4. No covered entity shall discriminate against a qualified individual on the basis of disability in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment.
5. (b) Construction
6. As used in subsection (a) of this section, the term “discriminate against a qualified individual on the basis of disability” includes
7. (1) limiting, segregating, or classifying a job applicant or employee in a way that adversely affects the opportunities or status of such applicant or employee because of the disability of such applicant or employee;
8. (2) participating in a contractual or other arrangement or relationship that has the effect of subjecting a covered entity's qualified applicant or employee with a disability to the discrimination prohibited by this subchapter (such relationship includes a relationship with an employment or referral agency, labor union, an organization providing fringe benefits to an employee of the covered entity, or an organization providing training and apprenticeship programs);
9. (3) utilizing standards, criteria, or methods of administration
10. (A) that have the effect of discrimination on the basis of disability;
11. (B) that perpetuates the discrimination of others who are subject to common administrative control;
12. (4) excluding or otherwise denying equal jobs or benefits to a qualified individual because of the known disability of an individual with whom the qualified individual is known to have a relationship or association;
13. (5)
14. (A) not making reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee, unless such covered entity can demonstrate that the accommodation would impose an undue hardship on the operation of the business of such covered entity; or
15. (B) denying employment opportunities to a job applicant or employee who is an otherwise qualified individual with a disability, if such denial is based on the need of such covered entity to make reasonable accommodation to the physical or mental impairments of the employee or applicant;
16. (6) using qualification standards, employment tests or other selection criteria that screen out or tend to screen out an individual with a disability or a class of individuals with disabilities unless the standard, test or other selection criteria, as used by the covered entity, is shown to be job-related for the position in question and is consistent with business necessity; and
17. (7) failing to select and administer tests concerning employment in the most effective manner to ensure that, when such test is administered to a job applicant or employee who has a disability that impairs sensory, manual, or speaking skills, such test results accurately reflect the skills, aptitude, or whatever other factor of such applicant or employee that such test purports to measure, rather than reflecting the impaired sensory, manual, or speaking skills of such employee or applicant (except where such skills are the factors that the test purports to measure).

Source: **http://www.ada.gov/pubs/adastatute08.htm#12112**

<http://www2.ed.gov/about/offices/list/ocr/504faq.html>  Q & A

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**Requesting your child’s test scores:**

On June 1, 1999 the U.S. Department of Education (USDE) sided with Debra Gaudette after the Connecticut State Department of Education refused to provide her daughter's test answers on the Connecticut Mastery Test (CMT).  [The USDE agreed that Connecticut State Department of Education violated Mrs. Gaudette's parental rights under the Family Educational Rights and Privacy Act (FERPA](http://www.eagleforum.org/educate/1999/sept99/ct-mother.html)) in denying her access to the test information.
When his daughter was denied her diploma, Martin Swaden of Edina, Minnesota asked to see his daughter's answers from the test used to determine who graduates from high school. Initially the state refused this father's request. Mr. Swaden, an attorney, persisted threatening to sue the school district; When he was given the test and his daughter's answer sheet and sat in a room with state officials, he found his daughter had accurately answered six questions that National Computer Systems, NCS, had scored wrong. Had they scored her correctly it would have been enough to raise her above the cut score determined for graduation. "When it was all over, the state determined that errors by NCS had caused 47,000 Minnesota students to get lower scores than they deserved, 8,000 to fail when they should have passed, and 525 seniors to be unjustly denied diplomas."

 Sample letter that you can submit to see your child's test, answers, and scores.

**Additional Reading:**<http://www.floridatoday.com/article/20130304/NEWS01/130304005/Lawsuit-against-Brevard-school-closures-claims-civil-rights-issue>

What if Parents and Teachers call for publishing of tests <http://ednotesonline.blogspot.com/2012/08/if-parents-and-teachers-call-for.html>

Harvard Education Letter; Opt out Movement Gains Steam <http://www.hepg.org/hel/article/548#home>
NY Television Network Features Parents Opting Out

<http://www.wgrz.com/news/article/167080/13/Opting-Out-Of-Standardized-Tests>