

FOR IMMEDIATE RELEASE

Contact: Andrea Mogensen
Tel: (941) 955-1066
E-Mail: AMogensen@sunshinelitigation.com

August 26, 2016

Judge rules report cards do matter for third grade students

Education officials ordered to accept student portfolios or report cards for kids who opt out of standardized tests

Tallahassee – A Tallahassee judge delivered a decisive blow to Florida’s standardized testing scheme, telling state and local school officials that report cards and classroom participation can be used as an alternative when parents opt out of testing. In a watershed moment for students who were not promoted to the third grade due of their minimal participation in the Florida Standards Assessment test, Judge Geivers granted a temporary injunction allowing some third graders to be promoted where school districts did not allow “a teacher-compiled portfolio that consists of non-test class work and test-based standards assessments.”

The state had argued that allowing students to opt out of standardized tests would undermine the Jeb Bush-era focus on testing, while the parents claimed that the law allowed for promotion decisions to be based on report cards and actual classroom participation.

Judge Geivers sided with the parents, finding that the Department of Education and the Hernando County School Board violated the law when they illegally refused to provide any portfolio option and that “neither the [Department of Education or local school boards] have the discretion to ignore the Florida Laws.” Geivers ruling defined what “minimal participation” is by stating that “the children were present at the time, broke the seal on the materials and wrote their names, thus meeting their obligation to participate.” In addition, she wrote: “The School Board and [Department of Education] had no right to ignore the legislatively adopted portfolio option” and ordered the Hernando County School Board to “immediately refrain from further actions and must provide the portfolio option.” She ordered education officials “to stop refusing to accept a student portfolio or report card based on classroom work throughout the course of the school year.”

The Court also found it unlawful in districts such as Hernando County where a child without a reading deficiency who has not passed the FSA is held back, citing Florida Statute 1008.25(5)(c)(6) which prohibits retaining students solely for FSA non-compliance.

The judge ordered the Department of Education to stop disseminating misinformation that promotion required a level 2 score on the statewide test, finding that report cards and classroom work could be used to promote a third grader.

"We are very pleased that the court agreed with us that it is in the public interest that the State Board of Education and school districts in Florida follow our laws, and focus on whether children can read, not whether they took a particular test," said Andrea Flynn Mogensen, lead counsel for the children. "We are especially pleased that it was specifically ordered that the Department of Education must accept minimal participation in testing as fulfilling the student's statutory requirement to participate, and that grade 3 students with no reading deficiency should be promoted, not retained."

The ruling came at a critical juncture for what's known as the opt-out movement. The Department and local school boards had amassed a legal team of more than 20 lawyers to fight the lawsuit, which has been on a legal roller coaster since it was filed 16 days ago. The case was briefly removed to federal court, but the parents were able to obtain a ruling from a federal judge two days later sending it back to state court. School boards from around the state then filed an emergency appeal with the First District Court of Appeal in Tallahassee, seeking to stop Geivers from taking evidence in the case. Geivers held a marathon 9-hour hearing earlier this week, taking testimony from state educational officials from across the state as well as parents of third grade students.

A copy of the ruling can be found at <http://goo.gl/aeFvOL>.