



New Hampshire

Department of Education

Serving New Hampshire's Education Community

Technical Advisory

Policy Governing the Administration of Non-Academic Surveys or Questionnaires

RSA 186:11, IX-d,

*This Technical Advisory continues the New Hampshire Department of Education's communication regarding the new legislation which was passed into law during the 2017 legislative session. **Senate Bill 43 becomes effective September 16, 2017.***

During the 2017 legislative session, RSA 186:11, IX-d, which requires school districts to adopt a policy governing the administration of non-academic surveys or questionnaires to students, was amended. SB 43 was signed by the Governor on July 18, 2017 and becomes effective on September 16, 2017. The amendment eliminates the "opt-out" provision and now states that **no student is required to submit to a non-academic survey or questionnaire without obtaining written consent of a parent or legal guardian.** The new law is posted below in its entirety with the amendment in bold italic font for convenience:

The state board of education shall, in addition to the duties assigned by RSA 21-N:11: . . .

IX-d. Require school districts to adopt a policy governing the administration of non-academic surveys or questionnaires to students. The policy shall require school districts to notify a parent or legal guardian of a non-academic survey or questionnaire and its purpose. ***The policy shall provide that no student shall be required to volunteer for or submit to a non-academic survey or questionnaire, as defined in this paragraph, without written consent of a parent or legal guardian unless the student is an adult or an emancipated minor. The policy shall include an exception from the consent requirement for the youth risk behavior survey developed by the Centers for Disease Control and Prevention. The policy shall also allow a parent or legal guardian to opt-out of the youth risk behavior survey developed by the Centers for Disease Control and Prevention.*** The school district shall make such surveys or questionnaires available, at the school and on the school or school district's website, for review by a student's parent or legal guardian at least 10 days prior to distribution to students. In this paragraph, "non-academic survey or questionnaire" means surveys, questionnaires, or other documents designed to elicit information about a student's social behavior, family life, religion, politics, sexual orientation, sexual activity, drug use, or any other information not related to a student's academics.

The law now requires **written consent** of a parent or legal guardian, unless the student is an adult or an emancipated minor, before a student is allowed to participate in a non-academic survey or questionnaire. Thus, the new version of the law replaces the previous "opt-out" provision with an "opt-in" provision. Therefore, school districts should modify their existing policies to specify how and when they will seek to receive the written consent from parents and legal guardians for non-academic surveys and questionnaires. A policy that permits use of

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written electronic consent in the form of email or some type of on-line form in which the school can be reasonably assured of the validity of the consent would meet the requirements of this law.

The only exception is for the Youth Risk Behavior Survey (YRBS) that is developed by the Centers for Disease Control and Prevention, which is not subject to the parental consent requirement, but has an “opt-out” provision. Therefore, existing policies should also be modified to address how and when school districts will provide parents and legal guardians with the opportunity to exercise the “opt-out” provision for the YRBS. The YRBS is subject to the requirement to “make such surveys or questionnaires available, at the school and on the school or school district’s website, for review by a student’s parent or legal guardian at least 10 days prior to distribution to students.”

The intent of the opt-out policy is to provide parents or legal guardians an opportunity to determine the suitability of the survey or questionnaire for their student. Strong opt-out policies will include multiple modes of notification to provide sufficient assurance that parents or legal guardians have been afforded the opportunity that the law requires. Such methods of notification may include email, posting on a web site, a letter sent through the school’s parent portal, a handout sent home with students or by other means. Regardless of the exact methodologies that schools decide to utilize, the best method to reach that assurance that parents or legal guardians have had an opportunity to make a suitability determination would be to have some type of affirmative parental or legal guardian acknowledgement of receipt.

Finally, the term “non-academic survey or questionnaire” is defined in the law. That definition contains a catch-all provision of “or any other information not related to a student’s academics.” With this broad terminology, school districts must exercise care to allow parents to opt-in to surveys and questionnaires that cover topics which are not specifically enumerated in the law, such as mental health issues, technology use at home or any variety of such topics.

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