

CSBA Sample Board Policy

Students

BP 5022(a)

STUDENT AND FAMILY PRIVACY RIGHTS

Note: The No Child Left Behind Act of 2001 (P.L. 107-110, Section 1061) significantly amended 20 USC 1232h, the Protection of Pupil Rights Act (PPRA), to **mandate** that any district receiving funds from a USDOE-administered program adopt a policy regarding the (1) administration of surveys and physical exams/screenings; (2) right of parents to inspect instructional materials, and (3) collection of personal information for marketing purposes.

The Governing Board believes that personal information concerning district students and their families should be kept private in accordance with law.

(cf. 0000 - Vision)

(cf. 0100 - Philosophy)

(cf. 0200 - Goals for the School District)

(cf. 5020 - Parent Rights and Responsibilities)

(cf. 5021 - Noncustodial Parents)

(cf. 5125 - Student Records)

(cf. 5125.1 - Release of Directory Information)

(cf. 6000 - Concepts and Roles)

(cf. 6162.8 - Research)

Note: 20 USC 1232h **mandates** that the district's policy regarding student privacy be developed in consultation with parents/guardians. Such consultation could occur during meetings of the school site council or parent association, or a separate committee could be convened to review the draft policy. The following paragraph should be modified to reflect district practice.

The Superintendent or designee shall consult with parents/guardians regarding the development and adoption of this policy.

Collection of Personal Information for Marketing Purposes

Note: 20 USC 1232h, as amended by the No Child Left Behind Act of 2001 (P.L. 107-110, Section 1061), **mandates** that districts receiving USDOE-administered funds adopt a policy concerning the collection, disclosure or use of personal information, such as a student's name or address, collected from students for marketing purposes. See the accompanying administrative regulation for a definition of *personal information*.

Option 1 is for use by districts that wish to adopt a policy prohibiting the collection of personal information for marketing. Option 2 is for use by districts that wish to authorize the collection of such information. For districts selecting Option 2, 20 USC 1232h **mandates** adoption of a policy that allows parents/guardians to preview the instrument and to opt their child out of the activity, and provides arrangements to protect student privacy. See the accompanying administrative regulation for language implementing this mandate.

STUDENT AND FAMILY PRIVACY RIGHTS (continued)

OPTION 1: The Board prohibits district staff from administering or distributing to students survey instruments that are designed for the purpose of collecting personal information for marketing or for selling that information.

OPTION 2: The Board authorizes district staff to administer or distribute survey instruments to students that are designed for the purpose of collecting personal information for marketing or for selling that information. The Superintendent or designee shall ensure that these instruments are administered in accordance with law and administrative regulation.

Legal Reference:

EDUCATION CODE

49450-49457 Physical examinations

49602 Confidentiality of pupil information

51101 Parents Rights Act of 2002

51513 Personal beliefs

51938 Sexual Health And HIV/AIDS Prevention Education Act; notice and parental excuse

UNITED STATES CODE, TITLE 20

1232g Family Educational Rights and Privacy Act

1232h Protection of pupil rights

Management Resources:

WEB SITES

CSBA: <http://www.csba.org>

CDE: <http://www.cde.ca.gov>

USDOE, Family Policy Compliance Office: <http://www.ed.gov/offices/OM/fpco/>

CSBA Sample Administrative Regulation

Students

AR 5022(a)

STUDENT AND FAMILY PRIVACY RIGHTS

Definition

Personal information means individually identifiable information including a student's or parent/guardian's first and last name, a home or other physical address (including street name and the name of the city or town), a telephone number, or a social security identification number. (20 USC 1232h)

Surveys Requesting Information about Beliefs and Practices

Note: Education Code 51513 provides that districts shall not administer exams, surveys or questionnaires containing questions about a student's or his/her family's personal beliefs or practices in sex, family life, morality and religion unless the student's parent/guardian has provided prior written consent (i.e., "active consent"). The following paragraph regarding surveys is for use by all districts, and is **mandated**, pursuant to 20 USC 1232h, for districts receiving funds from a program administered by the U.S. Department of Education.

A student's parent/guardian shall provide prior written consent before the student participates in a survey containing one or more of the following items: (20 USC 1232h; Education Code 51513)

1. Political affiliations or beliefs of the student or his/her family
2. Mental or psychological problems of the student or his/her family
3. Sexual behavior or attitudes or personal beliefs and practices in family life or morality
4. Illegal, anti-social, self-incriminating or demeaning behavior
5. Critical appraisals of other individuals with whom students have close family relationships
6. Legally recognized privileged or analogous relationships, such as those of lawyers, physicians or ministers
7. Religious practices, affiliations or beliefs of the student or his/her parent/guardian
8. Income, except to the extent that income is required to be disclosed by law for participation in a program or for receiving financial assistance under such a program

STUDENT AND FAMILY PRIVACY RIGHTS (continued)

Note: Pursuant to 20 USC 1232h districts are **mandated** to adopt a policy regarding the district's arrangements to protect student privacy in the event that a student participates in a survey regarding information about beliefs and practices, as defined above.

If a student participates in a survey regarding information about beliefs and practices as identified above, school officials and staff members shall not request or disclose the student's identity.

(cf. 6162.51 - Standardized Testing and Reporting Program)

(cf. 6162.8 - Research)

Note: The following paragraph is **optional**. Education Code 51938, as added by SB 71 (Ch. 650, Statutes of 2003), creates an exception to the above requirements by authorizing districts to administer to students in grades 7-12 anonymous, voluntary surveys regarding student health behaviors and risks upon providing written parent/guardian notification and allowing a parent/guardian to opt his/her child out of participation (i.e., "passive consent"). See sections below entitled "Parent/Guardian Access to Surveys and Instructional Materials" and "Notifications."

Notwithstanding the above requirements, the district may administer to students in grades 7-12, anonymous, voluntary, and confidential research and evaluation tools to measure student health risks and behaviors, including tests and surveys about the student's attitudes or practices related to sex as long as parents/guardians are provided written notice and given an opportunity to request that their child not participate. (Education Code 51938)

Exceptions to Collection of Personal Information

Any district restriction regarding collection of personal information shall not apply to the collection, disclosure, or use of personal information collected from students for the purpose of developing, evaluating or providing educational products or services for, or to, students or educational institutions, such as the following: (20 USC 1232h)

1. College or other postsecondary education recruitment or military recruitment
2. Book clubs, magazines, and programs providing access to low-cost literary products
3. Curriculum and instructional materials used by elementary and secondary schools
4. Tests and assessments to provide cognitive, evaluative, diagnostic, clinical, aptitude, or achievement information about students (or to generate other statistically useful data for the purpose of securing such tests and assessments) and the subsequent analysis and public release of the aggregate data from such tests and assessments

STUDENT AND FAMILY PRIVACY RIGHTS (continued)

5. The sale by students of products or services to raise funds for school-related or education-related activities

(cf. 1321 - Solicitation of Funds from and by Students)

6. Student recognition programs

(cf. 5126 - Awards for Achievement)

Parent/Guardian Access to Surveys and Instructional Materials

Note: 20 USC 1232h **mandates** that districts receiving funds from a USDOE-administered program adopt a policy detailing a parent/guardian's right to inspect surveys and instructional materials as specified below. Education Code 51101 also authorizes such inspection; see AR 5020 - Parent Rights and Responsibilities. In addition, pursuant to Education Code 51938, as added by SB 71 (Ch. 650, Statutes of 2003), districts that administer anonymous, voluntary surveys regarding health behaviors and risks to students in grades 7-12 must allow parents/guardians the opportunity to review the instrument and to request that their child not participate.

Pursuant to 20 USC 1232h, those districts that authorize the collection of personal information for marketing purposes (Option 2 in the accompanying Board policy) are **mandated** to adopt a policy concerning a parent/guardian's right to inspect the survey instrument. Districts that selected Option 1 in the accompanying Board policy thereby prohibiting the collection of personal information for marketing should delete references to marketing instruments in the paragraph below.

Before school staff administers a survey or evaluation containing personal information as identified above or distributes an instrument to a student for the purpose of collecting personal information for marketing, the student's parent/guardian may: (20 USC 1232h; Education Code 51938)

1. Upon request, inspect that survey or instrument before it is administered or distributed to his/her child or any instructional material used as part of his/her child's educational curriculum

(cf. 5020 - Parent Rights and Responsibilities)

Note: 20 USC 1232h requires that the district provide parents/guardians reasonable access to surveys, instruments and instructional materials within a reasonable amount of time after the request has been received. The following paragraph may be modified to reflect the district's definition of a reasonable timeline.

Within a reasonable period of time of receiving a request, the principal or designee shall permit a parent/guardian to view a survey, instrument or instructional material. A parent/guardian may view the document any time during normal business hours.

STUDENT AND FAMILY PRIVACY RIGHTS (continued)

2. Refuse to allow his/her child to participate in the activity

Students whose parents/guardians exercise this option shall not be penalized by the district. (20 USC 1232h)

Health Examinations

No school official or staff member shall subject a student to a non-emergency, invasive physical examination as a condition for school attendance, except as permitted or required under California law. (20 USC 1232h)

Invasive physical examination means any medical examination that involves the exposure of private body parts or any act during such examination that includes incision, insertion or injection into the body, but does not include a properly authorized hearing, vision or scoliosis screening. (20 USC 1232h)

(cf. 5131.61 - Drug Testing)

(cf. 5141.3 - Health Examinations)

Notifications

Note: 20 USC 1232h requires that districts receiving funds from a USDOE-administered program notify parents/guardians of the following.

At the beginning of the school year, the Superintendent or designee shall notify parents/guardians of: (20 USC 1232h)

1. The district's policy regarding student privacy
2. The process to opt their children out of participation in any activity described in this policy and administrative regulation
3. The specific or approximate dates during the school year when the following activities are scheduled:
 - a. Survey requesting personal information
 - b. Physical exams or screenings

Note: Districts that selected Option 1 in the accompanying Board policy prohibiting the collection of personal information for marketing should delete item #c below.

- c. Collection of personal information from students for marketing

STUDENT AND FAMILY PRIVACY RIGHTS (continued)

Note: As added by SB 71 (Ch. 650, Statutes of 2003), Education Code 51938 requires that districts administering to students in grades 7-12 anonymous, voluntary surveys regarding health behaviors and risks first provide parents/guardians with written notice. The following **optional** paragraph is for use by districts that choose to administer such surveys with "passive consent," as specified above.

Prior to administering anonymous and voluntary surveys regarding health risks and behaviors to students in grades 7-12, the district shall provide parents/guardians with written notice that the survey is to be administered. (Education Code 51938)

Parents/guardians shall also be notified of any substantive change in this policy and administrative regulation within a reasonable period of time after adoption of the change. (20 USC 1232h)

(cf. 5145.6 - Parental Notifications)