




DEPARTMENT OF EDUCATION
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November 1, 2013

GUIDANCE MEMORANDUM #13-02

TO: All School District Superintendents

FROM: Dale A.R. Erquiaga 
Superintendent of Public Instruction

SUBJECT: Privacy and Opting Out of Certain Testing and Data Systems

This memorandum is provided pursuant to the authority provided in NRS 385.175(5), directing the Superintendent of Public Instruction to enforce the observance of Title 34 of Nevada's statutes and all other statutes and regulations governing public education.

Questions related to the Common Core State Standards (see Guidance Memorandum #13-01) now focus on whether students can "opt out" of taking the Smarter Balanced assessments that will replace Criterion-Referenced Tests in Nevada in 2014-15. Potentially related is whether individual student data can be withheld from the State Longitudinal Data System (SLDS), also known as the Student Accountability Information Network (SAIN).

Nevada Revised Statutes provide no "opt out" provisions for either testing or data systems. However, recognizing the public interest in privacy, the Department of Education has made a careful examination of the relevant statutes in an effort to accommodate parents and guardians. Unfortunately, federal and state laws leave no room for me to establish such a procedure. U.S.C. Title 20, which sets the requirements for a state plan related to serving children through public education, also establishes that academic assessments "measure the achievement of all children..." [20 USC §6311(b)(3)(C)] This law is referenced in NRS 389.550, providing for the administration of state examinations – historically known as the Criterion-Referenced Tests and now transitioning to the tests developed by the Smarter Balanced Assessment Consortium. It is clear from both these statutes that students present during the administration of the examinations may not "opt out" of taking the test.

Further, NRS 386.650 provides for the adoption and maintenance of an automated system of accountability information for Nevada (SLDS or SAIN). This statute refers to "a system of unique identification for each pupil" such that "individual pupils may be tracked over time" in order to carry out the requirements set forth in the law. Again, no "opt out" provisions are provided and the intent of the law is clearly to include all students. It should also be noted, however, that the same statute sets forth guidelines for protecting the privacy of student information.

Given the lack of any authority for the Superintendent of Public Instruction to create "opt out" provisions for assessments or data collection, and given the explicit statements of "all children" and "each pupil" in the relevant statutes, requests to remove students from these procedures and systems must be denied. A copy of this guidance memorandum may be provided to parents or others making such a request and, if the individual desires, both the request and this memorandum may be placed in the student's school file.