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## What is the PPRA?

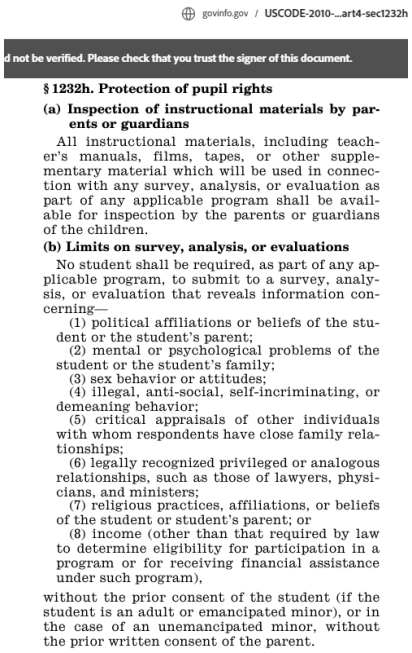
From the US Department of Education: The regulations at 34 CFR Part 98 implementing section 445 of the General Education Provisions Act (GEPA)(20 U.S.C. 1232h), which is commonly referred to as the **Protection of Pupil Rights Amendment (PPRA)**. These regulations can also be found at the Electronic Code of Federal Regulations: Title 34, Part 98--Protection of Pupil Rights Amendment

Specifically in regard to surveys it says in §1232h. Protection of pupil rights (b) Limits on survey, analysis, or evaluations:

No student shall be required, as part of any applicable program, to submit to a survey, analysis, or evaluation that reveals information concerning—

(1) political affiliations or beliefs of the student or the student's parent; (2) mental or psychological problems of the student or the student's family; (3) sex behavior or attitudes; (4) illegal, anti-social, self-incriminating, or demeaning behavior; (5) critical appraisals of other individuals with whom respondents have close family relationships; (6) legally recognized privileged or analogous relationships, such as those of lawyers, physicians, and ministers; (7) religious practices, affiliations, or beliefs of the student or student's parent; or (8) income (other than that required by law to determine eligibility for participation in a program or for receiving financial assistance under such program),

without the ***prior consent*** of the student (if the student is an adult or emancipated minor), or in the case of an unemancipated minor, without the ***prior written consent*** of the parent.



govinfo.gov / USCODE-2010-...art4-sec1232h

d not be verified. Please check that you trust the signer of this document.

**§ 1232h. Protection of pupil rights**

**(a) Inspection of instructional materials by parents or guardians**

All instructional materials, including teacher's manuals, films, tapes, or other supplementary material which will be used in connection with any survey, analysis, or evaluation as part of any applicable program shall be available for inspection by the parents or guardians of the children.

**(b) Limits on survey, analysis, or evaluations**

No student shall be required, as part of any applicable program, to submit to a survey, analysis, or evaluation that reveals information concerning—

(1) political affiliations or beliefs of the student or the student's parent;
(2) mental or psychological problems of the student or the student's family;
(3) sex behavior or attitudes;
(4) illegal, anti-social, self-incriminating, or demeaning behavior;
(5) critical appraisals of other individuals with whom respondents have close family relationships;
(6) legally recognized privileged or analogous relationships, such as those of lawyers, physicians, and ministers;
(7) religious practices, affiliations, or beliefs of the student or student's parent; or
(8) income (other than that required by law to determine eligibility for participation in a program or for receiving financial assistance under such program),

without the prior consent of the student (if the student is an adult or emancipated minor), or in the case of an unemancipated minor, without the prior written consent of the parent.

**Original Survey Sent out for Civics Project**

Below is the original survey sent to the Tahanto community as well as a summary of the issues and a review of policy.

You'll notice several things about this survey as we note here:

1. Parents were not informed about this survey prior to it being sent and were given no option to opt out.
2. It was sent to students in all grades 6-12.
3. At the top of the survey in red text is a note that questions with an asterisk are "required" which may lead some students to believe they MUST answer this survey.
    a. All questions are marked with the "required" asterisk.
4. There is no indication that answers will be kept confidential or how they will be stored or used.
5. Questions 2 and 3 ask the student to identify themselves as to their sexuality and whether or not they've experienced discrimination.
    a. These questions are marked as "required" despite the students having the right not to answer survey questions regarding their sexual attitude or behavior.
    b. A reasonable person might consider an individual's LGBTQ+ status as sexual attitude or behavior and this question may be seen as an attempt to require a person to state to the world what their sexuality is, even if they are not comfortable doing so. This survey asks them to "out" themselves.
    c. Question 3 may also violate #4 in the PPRA list of 8 areas not required to be answered as it asks the student to respond to possible illegal activity.
6. Questions 3-7 violate #4 in the above PPRA list as it asks the student to report on illegal behavior.
    a. If any student answered "yes" (I have) to these questions we would expect that the District perform a full investigation into possible illegal activity taking place within the school as all of these questions ask about the students knowledge of discrimination based on the protected classes of sexual orientation or gender identity.
    b. Did the survey receive any "yes" answers to these?
7. Question 7 requires the student to report on confidential legal matters between potentially themselves, the school, and school personnel.
    a. "Cases of harassment" allegations are disciplinary matters, possibly rising to a higher level, and both victims and personnel, to the extent we believe everyone is innocent until proven guilty, have some expectation of a right to privacy in these matters.
    b. Policy AC section VII Confidentiality states "Investigations of discrimination, including harassment complaints shall be conducted in such a manner as to disclose information only to those with a need to know or those who may have information pertinent to the investigation"

i. Requiring a student to answer a survey and report on these matters, or provide data which may then be reported through this civics project, may be a direct violation of this policy AC.

What follows is a review of the proposed policy suggested by MASC as well as an explanation as to several edits the policy sub committee is suggesting so that the BBRSD may avoid potential conflicts and violations in the future. There is no attempt here to discriminate or violate civil rights as has been suggested, in fact we are attempting to add layers of protection to all students whose rights may have been violated previously through the required submission to certain surveys.

The bottom line: students have a right to certain levels of privacy, requiring them to violate their own rights by submitting to surveys without their or their parents/guardians permission is wrong. Despite previous accusations, this effort to implement policy ILD is NOT driven by any opinions of this committee regarding LGBT issues, it is driven by rights afforded to ALL students regardless of their LGBT stance and an attempt to help the district avoid any future potential lawsuits from a violation of those rights. The only reason the LGBT topic came about here is because the survey in question from Tahanto in 2024 included this topic, it is the administration of this survey and lack of parental notice in particular which we believe is the issue regarding PPRA.

It is slightly concerning that this survey was conducted with the full knowledge and support of the school administration despite it appearing to be very close to, if not fully in violation of, the line of violating the PPRA. Also concerning is the idea that some think the district must have a policy in place in order for administration to be expected to follow the law. Regardless of what version the BBRSD Policy ILD take in the future, the District cannot make policy or enter an agreement that is unlawful or violates other law/rights of students.

# Discrimination against LGBTQ+ students

Keep in mind that these questions are about Tahanto experiences.

* Indicates required question

1. What grade are you in? *

*Mark only one oval.*

- ◯ 6th
- ◯ 7th
- ◯ 8th
- ◯ 9th
- ◯ 10th
- ◯ 11th
- ◯ 12th

2. Do you identify as part of the LGBTQ+ community? *

*Mark only one oval.*

- ◯ I do
- ◯ I do not
- ◯ I'd prefer not to say

3. Have you experienced discrimination regarding your sexual orientation or gender identity? *

*Mark only one oval.*

- ◯ I have
- ◯ I have not

4. Have you witnessed someone else being discriminated against regarding their sexual orientation or gender identity? *

*Mark only one oval.*

- ◯ I have
- ◯ I have not

5. Have you experienced or witnessed discrimination this year? *

*Mark only one oval.*

- ◯ I have
- ◯ I have not

6. Have you experienced or witnessed discrimination in the past 4 years? *

*Mark only one oval.*

- ◯ I have
- ◯ I have not

7. Have you brought up a case of harassment with a teacher or the office? If so, what steps were taken to correct the situation? *

_____

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**Example of other district survey policies**

## Lexington ILD

Note in the Lexington version of ILD posted below, #4, it requires permission for any studies "authorized" by the school administration. It is our understanding that this particular BBRSD survey in question, while crafted and sent by a student, was reviewed and approved, or "authorized", by both their teacher and the principal of Tahanto, and thus would have been in the jurisdiction of the Lexington ILD policy.

**File: ILD - EDUCATIONAL RESEARCH IN THE LEXINGTON PUBLIC SCHOOLS**

All requests to conduct research in the Lexington Public Schools must be directed to the Superintendent or designee.

The following criteria will be utilized to make a determination regarding approval for such requests:

1. That the study results in direct benefits or provides direct services to the students of Lexington.
2. That the study provide in-service opportunities for the growth and development of faculty and/or staff.
3. That there be no expenditures of Lexington funds or use of staff/faculty time unless there are benefits as described in 1 and 2 above.
4. That students participating in studies, authorized by school administration, must have the approval of their parents.

## Welleselley public schools notice on PPRA:

Note their policy suggests this right to provide consent before being given any survey. This suggests that no survey should be provided or sent to a student until consent is given.

Notification of Rights Under the Protection of Pupil Rights Amendment (PPRA)

You are here: Home > Legal Notices > Notification of Rigl

The Protection of Pupil Rights Amendment (PPRA) gives parents/guardians and eligible students (age 18 years or older or emancipated under Massachusetts law) rights when a school conducts certain activities including the administration of student survey, analysis, or evaluation. These rights include, but are not limited to the following:

- A. Parents/guardians and eligible students have the right to provide consent before students will be given a survey that concerns one or more of the following eight areas ("protected information surveys") if such survey is funded by the U.S. Department of Education:
  - 1. Political affiliations or beliefs of the student or student's parent;
  - 2. Mental or psychological problems of the student or student's family;
  - 3. Sex behavior or attitudes;
  - 4. Illegal, anti-social, self-incriminating, or demeaning behavior;
  - 5. Critical appraisals of others with whom respondents have close family relationships;
  - 6. Legally recognized privileged relationships, such as with lawyers, doctors, or ministers;
  - 7. Religious practices, affiliations, or beliefs of the student or the student's parent; or
  - 8. Income, other than as required by law to determine program eligibility.
- B. Parent/guardians and eligible students also have a right to receive notice and an opportunity to opt-out of:
  - 1. Activities involving the collection, disclosure, or use of personal information obtained from students for marketing purposes ("marketing surveys");
  - 2. Any other protected information survey regardless of funding source;
  - 3. Any non-emergency, invasive physical examination or screening required as a condition of attendance, administered by the Wellesley Public Schools or its agent, and not necessary to protect the immediate health and safey of a student, except for hearing, vision, or scoliosis screenings or any physical exam or screening permitted or required by Massachusetts law.

Wellesley Public Schoolswill provide parent/guardians and eligible students notice within a reasonable period prior to the administration of these surveys and activities and an opportunity to opt-out, as well as

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**Policy ILD MASC Original Version**

# File: ILD - STUDENT SUBMISSION TO EDUCATIONAL SURVEYS AND RESEARCH

In this policy, "surveys, analyses, or evaluations" refer to methods of gathering data for research purposes.

Without the prior written consent of the student's parent/guardian, or of the student if they are at least 18 years of age, no student shall be required as part of any program wholly or partially funded by the U.S. Department of Education to submit to any survey, analyses, or evaluation that reveals information concerning:

1. Political affiliations or beliefs of the student or student's parent/guardian;
2. Mental or psychological problems of the student or student's family;
3. Sex behavior or attitudes;
4. Illegal, anti-social, self-incriminating, or demeaning behavior;
5. Critical appraisals of others with whom respondents have close family relationships;
6. Legally recognized privileged relationships, such as with lawyers, doctors, or ministers;
7. Religious practices, affiliations, or beliefs of the student or parents/guardian; or
8. Income, other than as required by law to determine eligibility for school programs or for receiving financial assistance under such program.

All instructional materials, including teachers' manuals, films, tapes, or other supplementary material which will be used in connection with any such survey, analysis, or evaluation shall be available upon request for inspection by the student's parent/guardian. For the purpose of this policy, "instructional material" does not include academic tests or assessments.

A parent/guardian may inspect, upon request, a survey created by a third party before the survey is administered or distributed to a student.

The Superintendent or designee will be responsible for implementing any procedures necessary to protect the privacy of participating students and to provide parents/guardians with access to surveys within a reasonable time before administration or distribution.

The School District will notify parents/guardians of this policy at least annually at the beginning of the school year and within a reasonable time of any substantive change in policy.

The District will directly notify parents/guardians annually at the beginning of the school year, and during the school year, when surveys, analyses, or evaluations are scheduled or anticipated.

Parents/guardians shall have the opportunity to opt their child out of participation in any survey, analysis, or evaluation. Students who are 18 years of age or older may opt out of such surveys, analyses, or evaluations.

Parents/guardians or eligible students who believe their rights have been violated may file a complaint with the Family Policy Compliance Office of the U.S. Department of Education.

LEGAL REF.: Protection of Pupil Rights Amendment, 20 U.S.C. § 1232h

CROSS REF.: JRA, Student Records

SOURCE: MASC Updated 2023

**Policy ILD as amended by policy sub committee - highlighted**

# File: ILD - STUDENT SUBMISSION TO EDUCATIONAL SURVEYS AND RESEARCH

In this policy, "surveys, analyses, or evaluations" refer to methods of gathering data for research purposes.

Without the prior written consent of the student's parent/guardian, or of the student if they are at least 18 years of age, no student shall be required as part of any program wholly or partially funded by the U.S. Department of Education, or any other as part of BBRSD, to submit to, be included in, or be sent any survey, analyses, or evaluation that reveals information concerning:

1. Political affiliations or beliefs of the student or student's parent/guardian;
2. Mental or psychological problems of the student or student's family;
3. Sex behavior or attitudes; For the avoidance of any doubt in BBRSD this also includes but is not limited to questions concerning sexual orientation, gender or preferred gender, or anything related to a students sexuality or sexual identity unless otherwise required by law;
4. Illegal, anti-social, self-incriminating, or demeaning behavior;
5. Critical appraisals of others with whom respondents have close family relationships;
6. Legally recognized privileged relationships, such as with lawyers, doctors, or ministers;
7. Religious practices, affiliations, or beliefs of the student or parents/guardian; or
8. Income, other than as required by law to determine eligibility for school programs or for receiving financial assistance under such program.

All instructional materials, including teachers' manuals, films, tapes, or other supplementary material which will be used in connection with any such survey, analysis, or evaluation shall be sent to parents ahead of the event and be available upon request for inspection by the student's parent/guardian at any reasonable time. For the purpose of this policy, "instructional material" does not include academic tests or assessments.

A parent/guardian shall be provided all materials for a survey created by a third party before the survey is administered or distributed to a student.

The Superintendent or designee will be responsible for implementing any procedures necessary to protect the privacy of participating students and to provide parents/guardians with access to surveys within a reasonable time before administration or distribution.

The School District will notify parents/guardians of this policy at least annually at the beginning of the school year and within a reasonable time of any substantive change in policy.

The District will directly notify parents/guardians annually at the beginning of the school year, and during the school year, when surveys, analyses, or evaluations are scheduled or anticipated. Parents/guardians shall have the opportunity to opt their child out of participation in any survey, analysis, or evaluation. Students who are 18 years of age or older may opt out of such surveys, analyses, or evaluations. To be clear, parents must be given the opportunity to opt their children out within a reasonable timeframe before any survey is sent to students. A reasonable timeframe would be no less than at least 10 calendar days in advance of sending such survey, perhaps longer as the situation may dictate.

Written consent may be obtained at the start of the school year using the form below, so long as copy of this policy is provided along with the form. Parent notification must still take place each time a survey is to be sent, at least 10 days prior to the survey being distributed to students, along with copy of the survey questions and other materials. Parents/guardians, or the student if 18 or older, may elect to opt in or out of individual surveys regardless of the initial annual election. A record of each election shall be maintained by the district and referenced before the sending of any survey to ensure no violations of this policy.

Parents/guardians or eligible students who believe their rights have been violated may file a complaint with the Family Policy Compliance Office of the U.S. Department of Education.

LEGAL REF.: Protection of Pupil Rights Amendment, 20 U.S.C. § 1232h

CROSS REF.: JRA, Student Records

SOURCE: MASC Updated 2023

Election form:

I, _____, the parent or legal guardian of _____,

(check one)

[__] agree to

[__] do not agree to

allow the student named above to participate in any surveys and research during this academic year. Regardless of my election above, I reserve the right to opt my student named above in or out of any individual surveys or educational research as they arise throughout the year.

**Explanation of Policy ILD proposed amendments**

1. Second paragraph: ***"be included in, or be sent"*** , ***"or any other as part of BBRSD"*** This language seeks to clarify "what" is happening here. As these rights belong to students, we believe they should retain these rights regardless of who is sending any survey or whatever program that survey is part of. For simplicity sake, we want these rights to apply to all students in BBRSD regardless of the program. In the sentences immediately before this language it states that students shall not be required to "submit to." Based on what happened in 2024 with students being sent a survey with questions marked as required to be answered, we feel it may be necessary to clarify exactly what we expect to happen here, and that is nobody should even be sent a survey unless it is in compliance with this policy or the law, as a young student who might receive said survey may not understand their rights not to have to respond to it. As the PPRA ***requires*** **prior written consent,** it seems it may be helpful to receive that consent before sending any survey otherwise the sender may inadvertently violate this policy and/or the law by waiting until after the survey is sent to inform parents and students of these rights and allowing an opportunity for a student to feel compelled to answer even if they might not be required to.

2. Item #3 of 8: ***"For the avoidance of any doubt in BBRSD this also includes but is not limited to questions concerning sexual orientation, gender or preferred gender, or anything related to a students sexuality or sexual identity unless otherwise required by law;"*** While we feel that it should be common sense what might be included in "sex behavior or attitudes" we want to make sure this is crystal clear that no student should be asked about or required to answer to their sexual identity, orientation, gender or preferred gender identity if they do not want to. This does NOT preclude any student from offering up this information if it is their choice to use their freedom of speech to do so, but they should not feel compelled to answer this as part of any survey. This does not prevent any person or entity from sending a survey asking these questions, it simply means that the sender must receive, in the words of the PPRA, "prior written consent of the students parent/guardian..."

3. Third paragraph: ***"sent to parents ahead of the event and be….at any reasonable time"*** the original language states that this material shall be available *upon request* but in the interest of transparency whenever permission is sought for participation in a survey, we feel it is more efficient if parents are simply sent a full package of what they are being asked to provide consent to.

4. Fourth paragraph: ***"shall be provided all materials"*** See #3 above.

5. Seventh paragraph: ***"To be clear, parents must be given the opportunity to opt their children out within a reasonable timeframe before any survey is sent to students. A reasonable timeframe would be at least a full calendar week in advance of sending such survey, perhaps longer."*** To avoid any confusion and inadvertently sending a survey to a student who may interpret it as required and who may otherwise have chosen to opt out, parents must be informed of such surveys before they are administered with a reasonable timeframe in which to consider the survey and respond.

6. Remainder: an attempt at simplifying the process, if parents are allowed to make this election at the beginning of the year it may streamline the process throughout the year. We recognize that not everyone will think this is easy, but it is required based on the rules associated with the PPRA.

**Email from Mirick O'Connell**

From: "Terry, Marc L." <mterry@mirickoconnell.com>

Date: June 18, 2024 at 9:11:47 AM EDT

To: Meagan Grill <mgrill@bbrsd.org>

Cc: "Rozak, Kimberly A." <krozak@mirickoconnell.com>

Subject: RE: policy

Meagan,

I have reviewed your draft policy. From a legal perspective, it meets the requirements of the Protection of Pupils Amendment (PPRA). Although that law creates an "opt out" framework, it does not prohibit the District from offering a greater level of protection in the form of an "opt in" framework.

My only comments, for the School Committee's consideration, are practical.

For example, in the first sentence, the proposed revision refers to surveys conducted by any entity. The PPRA applies to surveys and the collection of information by the District as a part of program that receives federal funding. This would include any survey or collection of information administered by the District on behalf of another entity, e.g., the MetroWest Adolescent Health Survey through the MW Health Foundation. This simply raises the question of who does the Committee seek to cover with this broad language other than the District. The Committee may wish to clarify this phrase.

Otherwise, my only comment is only whether the policy is logistically achievable. For example, is there a reasonable possibility that the materials will be in a voluminous hard copy form such that they couldn't be sent to all parents in advance? Is the District using copyrighted material that it might not be allowed to copy and circulate to parents? Can the District really fulfill a commitment to make such information available "at any time" or is a phrase like "at a reasonable time during normal business" more realistic?

As stated above, the policy is legally sound. The Committee may wish to consider whether the policy, as drafted, can be implemented or whether some minor tweaks are necessary.

I believe Kim is due back from vacation on July 1st. In the meantime, please let me know if you have any questions.

Thanks, Marc