

Opt-In and the Scarcity of Bullying Data: The Need for an Opt-Out Survey Law

The Law

New Jersey law currently requires “prior written informed consent from a student's parent or legal guardian” in order to administer surveys to students concerning certain sensitive subjects. N.J. STAT. ANN. § 18A:36-34(a). Sensitive topics triggering the “opt-in” requirement of prior written consent include questions concerning “mental and psychological problems” and/or “illegal, anti-social, self-incriminating and demeaning behavior.” N.J. STAT. ANN. § 18A:36-34(a)(2–4). Many surveys attempting to gather meaningful data about the prevalence of bullying in New Jersey schools and its associated harms fall under these categories, as would other topics often asked about in comprehensive surveys that include bullying questions, such as drug use or sexual behaviors.

The Issue

This opt-in requirement has been a huge hindrance to the collection of meaningful data about bullying in New Jersey. One obvious consequence is that lower response rates on surveys make data less reliable and less valuable. But the issue is especially relevant for some particular surveys that could otherwise provide a plethora of valuable insights about bullying in our state. For example, the New Jersey Student Health Survey—which is currently the only survey making state-level bullying inquiries—requires a 60% response rate in order to be considered representative of all New Jersey high school students. Because that survey contains questions pooled from the Youth Risk Behavior Survey, developed by the Centers for Disease Control and Prevention, the 60% threshold is mandatory. Simply put, if the threshold is not met, the data is not published. As a result, the opt-in requirement has combined with that threshold to create a situation in which New Jersey has had **no state-specific data available since 2013** on a variety of crucial topics, including school-based violence, bullying, suicide ideation, student health, and other behaviors that serve as risk-factors for our students. The New Jersey Department of Education conducts these surveys because they ask well-constructed and meaningful questions that matter, yet we cannot use the information that they would provide us because of the opt-in requirement. Given the emphasis that we as a state have placed on eliminating bullying and harassment in the last twenty years, it is imperative that we not continue to hinder our own efforts by placing unnecessary barriers in the way of meaningful data collection.

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Suggested Change

This opt-in requirement leaves New Jersey out of step with the vast majority of U.S. states. The Legislature should make a simple change to require written notice and an opt-**out** option for all student surveys on sensitive subjects. This will maintain parental and family choice without allowing apathy and inaction to cripple participation rates. Legislation proposed during the 2018-19 legislative session (Senate Bill 1936) would take us one step in the right direction by changing the opt-in requirement to an opt-out one for voluntary surveys, but would also maintain the opt-in requirement for mandatory surveys on sensitive topics. This distinction would unfortunately still leave many important surveys, such as the New Jersey Student Health Survey, vulnerable to falling through the cracks. When inaction effectively serves as a veto, simple inertia from busy parents and families ends up preventing us from collecting vitally important data about our students. Because of that, we should amend the proposed legislation and change the requirement to opt-**out** for all surveys, including mandatory ones.

Protections for students' privacy are crucial. The Coalition for Bullying Awareness and Prevention also suggests enacting the proposed provisions pending during 2018-19 that prohibit using student survey data for marketing or commercial purposes or in a way that would betray students' identities or match them to particular answers. Crucially, student and family privacy is actually better served by increasing the rates at which students take surveys; for example, it is far easier to make a guess as to how an individual answered a question when only twenty students take the survey than when the reports encompass answers from two hundred students. In order to help us learn about the problems our students face, protect their privacy, and collaborate to combat bullying, New Jersey must change our survey consent law to require opt-**out** procedures, rather than opt-in.

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