

HB 1496 – AS INTRODUCED

2014 SESSION

14-2442
04/05

HOUSE BILL **1496**

AN ACT relative to the objectivity and validity of student assessment materials.

SPONSORS: Rep. Hoell, Merr 23

COMMITTEE: Education

ANALYSIS

This bill provides that a school district shall not be required to administer any assessment which is not valid and appropriate, or which cannot be objectively scored.

Explanation: Matter added to current law appears in ***bold italics***.
 Matter removed from current law appears ~~[in brackets and struckthrough]~~
 Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Fourteen

AN ACT relative to the objectivity and validity of student assessment materials.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 1 Findings and Purpose. The general court finds that:

2 I. Student assessments are an effective measure of accountability when the assessment
3 exercises or tasks are valid and appropriate representations of the curriculum standards that
4 students are expected to achieve, according to RSA 193-C, which also specifies that:

5 (a) Assessments shall consist of a variety of exercises or tasks which can be objectively
6 scored; and

7 (b) Assessments may not contain exercises or tasks which subjectively measures or
8 surveys a student’s values, attitudes, or disposition;

9 II. Scheduled to be administered statewide in 2014-2015, the Smarter Balanced Assessments
10 are not valid, appropriate, and objectively scored as required by RSA 193-C. Specifically they:

11 (a) Will not be fully validated;

12 (b) Contain age-inappropriate tasks and assignments; and

13 (c) Contain a variety of subjectively scored assignments and tasks measuring student
14 attitudes, values and dispositions, which the general court refused to authorize in SB 48 of the 2012
15 legislative session.

16 III. Student privacy must be safeguarded when administering any assessment or survey as
17 many now share student level data without parental consent. The privacy of student data collected
18 within the district, including data indirectly collected through surveys or assessments, must be
19 guaranteed.

20 IV. Private student information, including the child’s name, home address, email address,
21 test scores, racial identity, economic and special education status, and detailed disciplinary and
22 health records, are being stored in databases that could potentially be shared with a variety of
23 government agencies and for-profit corporations, without obtaining parental consent and without
24 any guarantee that the privacy of that information.

25 V. In 1999, RSA 193-C:10 was adopted requiring that parents have “no fewer rights accorded
26 to them under the Family Educational and Privacy Rights Act (FERPA), 20 U.S.C. 1232g.”

27 VI. In 2011, the United States Department of Education changed the FERPA regulations
28 governing the release of student data to the private sector, without Congressional authorization and
29 in contradiction to federal statute. These new FERPA regulations:

30 (a) Removed limitations prohibiting educational institutions and agencies from
31 disclosing students’ previously privacy-protected personally identifiable information without first

HB 1496 – AS INTRODUCED
- Page 2 -

1 obtaining student or parental consent; and

2 (b) Reinterpreted FERPA statutory terms “authorized representative,” “education
3 program,” and “directory information” to give non-governmental actors increased access to student
4 personal data.

5 VII. In January 2012, the New Hampshire department of education and the federal Office of
6 Science and Technology Policy created the Education Data Initiative to release confidential student
7 data to third-party vendors.

8 VIII. Smarter Balanced Assessment Consortia and other assessment companies have agreed
9 to report fully and often to the United States Department of Education, sharing student-level data.

10 IX. Increased safeguards are needed to protect the privacy of student data records.

11 X. Sharable private student data includes biological and behavioral data, biometric records,
12 such as fingerprints, retina and iris patterns, voiceprints, DNA sequences, facial characteristics and
13 handwriting, religious and political affiliation of the family, and medical records

14 XI. The state longitudinal database system (SLDS) data collection of student records began
15 on April 2, 2012.

16 XII. Parents must have the ability to opt-out of the state longitudinal database system,
17 which creates digital student portfolios with over 400 data points collected for each child.

18 XIII. The United States Constitution describes the right to privacy: “The right of the people
19 to be secure in their persons, houses, papers, and effects, against unreasonable searches and
20 seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by
21 oath or affirmation, and particularly describing the place to be searched, and the persons or things to
22 be seized.”

23 XIV. Without adequate safeguards, the department of education or school districts may
24 violate the privacy rights of students through the administration of online assessments and surveys,
25 or by sharing and distributing student data records.

26 2 New Paragraph; Statewide Education Improvement and Assessment. Amend RSA 193-C:2 by
27 inserting after paragraph IV the following new paragraph:

28 V. “Objectively scored” means an assessment that measures student performance in terms of
29 knowledge and skills, but shall not survey or measure student values, attitudes, or disposition.

30 3 Statewide Improvement and Assessment Program; Assessment Required. Amend RSA 193-
31 C:6 to read as follows:

32 193-C:6 Assessment Required.

33 *I.* Each year, a statewide assessment shall be administered in all school districts in the state
34 in grades 3 through 8 and one grade in high school. All public school students in the designated
35 grades shall participate in the assessment, unless such student is exempted, or provided that the
36 commissioner of the department of education may, through an agreement with another state when
37 such state and New Hampshire are parties to an interstate agreement, allow pupils to participate in

1 that state's assessment program as an alternative to the assessment required under this chapter.
2 Home educated students may contact their local school districts if they wish to participate in the
3 statewide assessment. Private schools may contact the department of education to participate in the
4 statewide assessment.

5 ***II. School districts shall not be required to administer any assessment which is not***
6 ***valid and appropriate, or which cannot be objectively scored.***

7 ***III. A school district may administer an assessment which is not valid and***
8 ***appropriate only after first:***

9 ***(a) Informing parents that their child is being asked to participate voluntarily***
10 ***in research by taking an assessment that is not verified; and***

11 ***(b) Obtaining written informed consent from parents that their child may take***
12 ***part in a pilot or field test.***

13 ***IV. Any assessment which contains embedded questions for ongoing field testing***
14 ***shall meet the requirements of paragraph III.***

15 ***V. School districts may adopt alternate assessments that are a valid, accurate, and***
16 ***objectively scored measure of student performance.***

17 ***VI. A parent may refuse to allow his or her child to take an assessment if the parent***
18 ***determines that the assessment materials are objectionable as provided under RSA 186:11,***
19 ***IX-c or if student privacy will not be adequately protected. Such child shall be exempted.***

20 ***VII. A school district shall not administer any survey or assessment where the***
21 ***privacy of student data cannot be guaranteed. A district may elect to grade and score any***
22 ***assessment or survey administered within the district, aggregate student performance***
23 ***data, and share only aggregated student data outside the district to protect student***
24 ***privacy.***

25 4 Effective Date. This act shall take effect 60 days after its passage.