

Dedicated policymakers, educators and parents have worked with the New Hampshire Department of Education (NH DOE) over the past several years to ensure that the state develops and implements strict privacy laws and regulations regarding the protection of individual student information. With the NH DOE's transition to a new mathematics and English language arts statewide assessment (replacing the New England Comprehensive Assessment Program or NECAP for these content areas), increased dialogue regarding privacy and security of data is taking place. This dialogue is important so that we can reflect on the current laws and practices in place that will ensure all possible measures are taken to protect student identity, and at the same time, allow for educators to understand how to improve instructional practices for all students.

The following frequently asked questions attempt to answer many of the concerns that the NH DOE has received. This document will be updated as further questions require reflection.

QUESTIONS	ANSWERS
<p>How does the state of New Hampshire protect student identifiable data?</p>	<p>New Hampshire has two laws specifically intended to protect student privacy: RSA Section 193-C:11 and 193-E:5.</p> <p><i>RSA Section 193-C:11 Anonymity of Pupil Assessment Results; Parental Authorization Required.</i> <u>Individual pupil names or codes contained in the statewide assessment results, scores, or other evaluative materials shall be deleted for the purposes of records maintenance and storage of such results or scores at the department of education, unless a parent or legal guardian provides written authorization otherwise, or as required under federal law. Individual pupil results shall be made available to a parent, a legal guardian, or the pupil's school in accordance with the Family Educational and Privacy Rights Act, 20 U.S.C. 1232g</u></p> <p><i>RSA Section 193-E:5 Unique Pupil Identification</i> (see the full section at the end of this document):</p> <p>I (a) No personally identifiable information about a pupil including name and social security number, shall be collected or maintained by the state in such a manner as to allow such information to be connected with the unique pupil identifier. Under no circumstances shall the department of education obtain or use a social security number as an identifier for any pupil. <u>The department shall not use unique pupil identifiers except in connection with the data warehouse and such use shall not be accessible to the public.</u></p> <p>.....</p> <p>(c) The unique pupil identifier shall be requested and maintained by the early childhood program, district, or postsecondary institution. The unique pupil identifier shall remain in the pupil's file throughout his or her academic career in New Hampshire.</p> <p>....</p>

(g) No person, including an individual, business, government, or governmental entity, shall require an individual to provide a unique pupil identifier as a condition of doing business, providing a service, or receiving a benefit of any kind, except as provided in RSA 193-E:5, I(c). Any person or entity that knowingly violates the provisions of this subparagraph shall be liable for actual damages or \$25,000, whichever is greater, for each violation. Each denial of services or benefits shall constitute a separate offense under this subparagraph.

....

(l) The department of education shall provide no personally identifiable information collected pursuant to this chapter, including but not limited to name, date of birth, or social security number to any person or entity, other than an early childhood program, district, or postsecondary institution authorized to access this data, absent a court order. Under no circumstances shall personally identifiable information or the unique pupil identifier be provided to any person or entity outside of New Hampshire. Any person who knowingly violates this provision is guilty of a class B felony and may be subject to involuntary termination of employment.

...

(n) Notwithstanding subparagraphs (a)-(m), to enable the department of education to ensure the accuracy of the data, the commissioner of the department of education may, in writing, grant individuals access to the data warehouse, including but not limited to, access to the unique pupil identifier for the purpose of connecting information in the warehouse with the random number generator.

What information is currently collected on the NECAP assessment?

The following information has been securely collected on the NECAP and NH Alternate Assessment. Please continue to read this document to learn how this information is protected. The name and birthdate information has been printed on a label to ensure the right student takes the right test. The demographics are then stored in the NH DOE’s Data Warehouse only with the unique student identifier. **At no time is personally identifiable information reported to the public or used in any other way except to validate the assessment.**

District name	Name	Limited English proficient
School name	Birthdate and town of birth (used in case of duplicate names)	Student with disabilities
Grade	Unique student identifier	Economically disadvantaged
Reporting status (public, homeschooled, private, exchange student)	Gender	Migrant
Testing school type (public, private, out of district, charter school)	Race/Ethnicity	Title I participation

<p>What is the difference between student identifiable data and student-level data?</p>	<p>Student identifiable data or information (such as an individual’s name) can be used to connect data with the correct individual. It is important that school, district and/or state staff who have authority to see and access personally identifiable information can do so to ensure data quality and accuracy.</p> <p>Student-level data is data that has been “anonymized” by removing all personally identifiable information, such as students’ names, to protect personal privacy. Often, research and policy require looking at student-level data, but researchers do not need to know the names of students (or other personally identifiable information). De-identified data allow policy and practice to be informed by research using actual student characteristics without compromising students’ privacy.</p> <p>There are cases where a student demographic such as race or gender can result in the identification of a student. For example, if there is only one male in grade 3 in a small school. In these cases, this type of data is suppressed in any aggregate reports.</p>
<p>How does the Family Educational Rights and Privacy Act (FERPA) define “personally identifiable information”</p>	<p>FERPA specifically defines the term “personally identifiable information” as including, but not limited to, “the student’s name; the name of the student’s parent or other family members; the address of the student or student’s family; a personal identifier, such as the student’s Social Security Number, student number, or biometric record; other indirect identifiers, such as the student’s date of birth, place of birth, and mother’s maiden name; other information that, alone or in combination, is linked or linkable to a specific student that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty; and information requested by a person who the educational agency or institution reasonably believes knows the identity of the student to whom the education record relates.” (34 CFR § 99.3)</p>
<p>What student identifiable information is stored in the state’s data warehouse?</p>	<p>By state law NH DOE’s data warehouse <u>does not</u> include personally identifiable information including name, social security number or other personally identifiable numbers. The state is not allowed to use social security numbers as an identifier and does not collect these for its general education students. To protect privacy and meet FERPA requirements, access to student level data is restricted and only aggregate data (above restricted cell sizes) is accessible to the public. For more information about state restrictions, please see NH RSA 193-E:5 Unique Pupil Identification.</p> <p>The DOE collects information from school districts and from one other agency, Department of Health and Human Services, for Direct Certification*. This information is stored in our data warehouse by student identifier and not by student name.</p>

	<p>The data collected and stored includes race, ethnicity, gender, English language participation, attendance and suspension information, enrollment information, special education involvement, eligibility in free and reduced lunch program, national and local assessment information, involvement in the 21st century afterschool programs, participation in career and technical education programs, course information, advanced placement participation, Title I participation, homeless status and graduation information. Again, the student personally identifiable information is not stored in the data warehouse.</p> <p>Separated from the data warehouse, the NH DOE maintains a random number generator that allows schools to create a unique student identifier for each of their students. This random number generator maintains a list of the students who have been assigned a unique pupil identifier. However, to ensure security and privacy, it does not contain the identifier itself. The random number generator contains the pupil's name, date of birth, town of birth, and gender.</p> <p>193-E:4 Definitions - VII. "Random number generator" means the electronic system that creates unique pupil identification numbers and assigns a unique pupil identification number to a pupil when an early childhood program, a district, or a postsecondary institution enters a pupil's name, date of birth, town of birth, and gender. The system shall maintain that information and the name of the district of origin, and no other information. This system shall not retain the unique pupil identification number.</p> <p><i>*All children who participate in the Food Stamp (SNAP) Program and Financial Assistance to Needy Families (FANF) are eligible for Free School Meals. The process of automatically enrolling SNAP and FANF children for free meals is called Direct Certification.</i></p>
<p>What kind of student level assessment information is reported to the public?</p>	<p>Individual student level data is <u>not</u> reported to the public. NH DOE must report aggregate student achievement data based on the state's English language arts, mathematics, and science assessments, including data for students with disabilities who take an alternate assessment based on grade-level, modified or alternate academic achievement standards (ESEA section 1111(h)(1)(C)(i)). In reporting achievement data, the NH DOE must report achievement data at each proficiency level for the "all students" group and must disaggregate those data by race, ethnicity, gender, disability status, migrant status, English proficiency, status as economically disadvantaged and all "combined subgroups" as defined in its ESEA Flexibility Waiver. NHDOE need not report disaggregated achievement data if the number of students in a category is insufficient to yield statistically reliable information or the results would reveal personally identifiable information about an individual student (ESEA section 1111(h)(1)(C)(i)). In New Hampshire that number is 11 students.</p>
<p>For what purposes, specifically, does the state use student assessment data?</p>	<p>The primary use of data is to enable schools to access student information to inform instruction. This data is used by teachers, and other educators, to understand individual student academic needs and overall instructional practices and to target education based upon student results. The central focus is improving educational outcomes for every child.</p>

	<p>Additionally, the data is used to inform the public as to the aggregate state of education in New Hampshire. Public access is only available at the aggregate level. This data is used by parents when considering school performance, by legislators when considering education policy and by research institutes and the general public.</p> <p>The data collected in the system is also used by the NH DOE to guide policy and to work with legislators in order to inform policy. The data is frequently analyzed to provide fiscal impact for legislative considerations. The NH DOE also uses the data to report aggregate student data as required by state and federal programs.</p> <p>The data is used to determine state funding for schools. Schools receive funding based upon the characteristics of students being educated (e.g. assessment performance level, English language learners, student with disabilities, socio- economic status).</p>
<p>A recent federal report states Common Core and a brain mapping initiative recently announced by President Obama are being used to collect biometric data about children. How is this related to Common Core or Smarter Balanced?</p>	<p>Common Core and Smarter Balanced does not collect any biometric data. Common Core Standards do not require the collection of data at all.</p> <ul style="list-style-type: none"> • Common Core and Smarter Balanced is not related to the BRAIN (Brain Research through Advancing Innovative Neurotechnologies) Initiative, a recently-proposed scientific endeavor to map the brain. The BRAIN Initiative is not collecting any data from or about students and is not related to any education initiative or program. • A recently released research report (Promoting Grit, Tenacity and Perseverance: Critical Factors for Success in the 21st Century) prepared by SRI International on behalf of the US Department of Education is an overview of potential measurement methods of skills like perseverance and tenacity and is not related in any way to Common Core standards or assessments or any data collection. • The US Department of Education’s report on promoting grit and tenacity does not guide or reflect Common Core in any way. This report does address Common Core’s standard of “making sense of problems and persevering in solving them” to demonstrate the relevance of nonacademic skills.
<p>How will the NH DOE ensure that personally identifiable information is not shared with the public?</p>	<p>To meet industry standards for assessment, the Smarter Balanced Assessment Consortium will collect and maintains a minimum amount of non-personally identifiable information on behalf of its member states. Such information may include the following types:</p> <ul style="list-style-type: none"> • An identification number (not associated with the students’ official educational record), race, ethnicity, gender, grade level, school attended and course enrollment; • Standardized test scores, responses to test items; • Data regarding eligibility for English language development services, special education and special education services provided to the student; and • Data regarding eligibility for other compensatory programs and special program services provided to the student.

	<p>These data will be considered non-personally identifiable as long as they are considered within aggregates of at least 11 other records with the same attributes and the records do not constitute 100% of students with the same attributes so as to mitigate the risk that a student identity may be discovered. Student aggregate data of less than 11 records will not be maintained for the purposes of reporting.</p> <p>In addition, the Smarter Balanced Consortium adheres to the privacy requirements in the Family Educational Rights and Privacy Act of 1974 (FERPA), as amended (20 U.S.C. § 1232g; 34 CFR Part 99) and all other applicable federal and state laws and regulations that safeguard education records, privacy and confidentiality. Smarter Balanced will not collect student names or social security numbers.</p>
<p>How does NH DOE closely monitor the implementation of privacy policies?</p>	<p>Student level performance data is only seen by individuals at local school and district level, by the testing company scoring student performance, (currently Measured Progress of Dover, NH) and by a select few employees of the NH Department of Education who directly handle student data and are charged with its accuracy. They sign a strict anti-disclosure agreement as a condition of employment. The legislature has monitored this process. Students are given a Unique Student Identifier number at the local school so that data and reports do NOT carry specific identifiable information. Aggregate (not student specific or identifiable) data reports regarding student performance are available on the NH DOE’s website.</p> <p>The DOE IT Manager oversees a security committee that constantly reviews data access, privacy and security processes. Additionally, the DOE IT Manager reviews the systems and policies with the Commissioner Cabinet on a regular basis.</p>
<p>Will the data collected on students be intrusive / inappropriate?</p>	<p>No. New Hampshire has and will continue to make policies on collection, storage and the use of student data according to the state’s privacy laws. Smarter Balanced must adhere to all state and federal laws pertaining to the collection and storage of such data like that of the current NECAP and NAEP testing.</p>
<p>Can the federal government collect academic and other information about individual students?</p>	<p>The Higher Education Opportunity Act (HEOA) of 2008, No Child Left Behind (NCLB) legislation amending the Elementary and Secondary Education Act, the Education Reform Sciences Act of 2002, and the Individuals with Disabilities Education Act (IDEA) <u>prohibit the creation of a federal database with students’ personally identifiable information</u> (i.e., information such as SSN).</p> <ul style="list-style-type: none"> • Section 113 of HEOA: “... nothing in this Act shall be construed to authorize the development, implementation, or maintenance of a federal database of personally identifiable information on individuals receiving assistance under this Act, attending institutions receiving assistance under this Act, or otherwise involved in any studies or other collections of data under this Act, including a student unit record system, an education bar code system, or any other system that tracks individual students over time.”

	<ul style="list-style-type: none"> • Section 9531 of the Elementary and Secondary Education Act: "Nothing in this Act (other than section 1308(b) [relating to a migrant record system] shall be construed to authorize the development of a nationwide database of personally identifiable information on individuals involved in studies or other collections of data under this Act." • Section 182 of the Education Sciences Reform Act: "NATIONAL DATABASE- Nothing in this title may be construed to authorize the establishment of a nationwide database of individually identifiable information on individuals involved in studies or other collections of data under this title." • Section 616 of IDEA: "(ii) Rule of construction.--Nothing in this title shall be construed to authorize the development of a nationwide database of personally identifiable information on individuals involved in studies or other collections of data under this part." <p>Further, the federal government is authorized to publicly report specific <i>aggregate-level data only</i>. Federal law prohibits the reporting of aggregate data that could allow individuals to be identified and the federal government does not have access to the student-level information housed in state data systems. The following websites are useful in understanding federal and state law on privacy:</p> <ul style="list-style-type: none"> • Family Educational Rights and Privacy Act (FERPA): http://www.ed.gov/policy/gen/guid/fpco/ferpa/index.html • No Child Left Behind (NCLB): http://www2.ed.gov/nclb/landing.html • Individuals with Disabilities Education Act (IDEA): www.gpo.gov/fdsys/pkg/PLAW-107publ129 • Education Reform Sciences Act of 2002: http://www.ed.gov/p-12-reform • Higher Education Opportunity Act (HEOA) of 2008: http://www2.ed.gov/policy/highered/leg/hea08/index.html • New Hampshire Department of Education Law: http://www.gencourt.state.nh.us/rsa/html/XV/193-C/193-C-11.htm http://www.gencourt.state.nh.us/rsa/html/XV/193-E/193-E-5.htm
Why is it important to collect, analyze and use student data?	<p>Appropriate access to statewide longitudinal student level data enables the following:</p> <ul style="list-style-type: none"> • Teachers (as well as parents) have the information they need to tailor instruction and supports to help each student improve. • Administrators have the resources and information to effectively and efficiently gauge progress and manage the execution of education strategies and programs.

	<ul style="list-style-type: none"> • Policymakers are able to evaluate which policy initiatives show the best evidence of improving student achievement and preparing students for colleges and careers. • Taxpayers can be assured schools receive the appropriate apportionment of funds and are held accountable for the quality of instruction they provide students.
SMARTER BALANCED ASSESSMENT BACKGROUND (for further information, please click here)	
What is the Smarter Balanced Assessment Consortium?	Smarter Balanced is a state-led consortium (made up of 26 states) working collaboratively to develop next-generation assessment with the alignment to the Common Core State Standards (CCSS – see Frequently Asked Questions), New Hampshire’s (NH) new standards in mathematics and English language arts.
What are the Race to the Top Assessment grants?	<p>The U.S. Department of Education awarded \$330 million to two groups of states – the Partnership for Assessment of Readiness for College and Careers (PARCC) and the Smarter Balanced Assessment Consortium (SBAC) – to develop a valid next-generation assessment. www.smarterbalanced.org/pub-n-res/smarter-balanced-assessment-consortium-race-to-the-top-application-appendices/</p> <p>The grants were awarded through the Race to the Top Assessment Program, authorized under The American Recovery and Reinvestment Act of 2009 (ARRA). They provided funding to <u>consortia of states</u> to develop assessments that are valid, support and inform instruction, provide accurate information and measure student achievement against standards. The standards chosen to be tested by both consortia were the Common Core State Standards in English language arts and mathematics.</p> <p>For more information: http://www2.ed.gov/programs/racetothetop-assessment/index.html</p>
What will the assessment accomplish?	<p>The assessment will provide educators, parents and students with the information they need to continuously improve teaching and learning that will help ensure students graduate high school college- and career-ready. The assessment will serve all students, including English Language Learners and students with disabilities.</p> <p>The assessments increase the rigor of instruction to ensure students gain the knowledge needed to be successful in a competitive workforce.</p>
When will the new assessment be in place?	The assessment system will be fully implemented in the spring of 2015. States will administer the summative assessment at the last 12 weeks of the school year.

<p>Does the agreement between the Smarter Balanced Assessment Consortium and the U.S. Department of Education require the sharing of student identifiable information?</p>	<p>The Cooperative Agreement under which the U.S. Department of Education has funded the development of the Smarter Balanced assessment we will be using in New Hampshire clearly states (footnote for Item 3 on page 11) that eligible applicants awarded a grant under its program comply with the Family Educational Rights and Privacy Act (FERPA) and 34 CFR Part 99, as well as state and local requirements regarding privacy.</p> <p>Often the sentence in item 3 is taken out of the context of the footnote. This statement reads: “Work with the Department to develop a strategy to make student-level data that result from the assessment system available on an ongoing basis for research, including for prospective linking, validity, and program improvement studies.” The inclusion of the footnote provides evidence that Smarter Balanced is complying with state requirements regarding privacy.</p> <p>Additionally, as previously described, no personally identifiable data including Name and unique pupil identifier will be provided to Smarter Balanced.</p>
<p>The current NECAP assessment includes a survey of students. Does this survey require students to answer personal information such as: family gun ownership; parent education attainment and employment status; and physical home address?</p>	<p>No. The survey asks students questions regarding their assessment experience (e.g. “How difficult was the reading test?”), homework experience (e.g. “How often do you have math homework?”) and educational experience (e.g. “How do you spend most of your time in mathematics class?”). All of these questions are educationally appropriate.</p>

193-E:5 Unique Pupil Identification. –

I. The department of education shall, using federal funds only, implement and maintain a unique pupil identification system on a statewide basis that complies with the following requirements:

(a) No personally identifiable information about a pupil including name and social security number, shall be collected or maintained by the state in such a manner as to allow such information to be connected with the unique pupil identifier. Under no circumstances shall the department of education obtain or use a social security number as an identifier for any pupil. The department shall not use unique pupil identifiers except in connection with the data warehouse and such use shall not be accessible to the public.

(b) The random number generator shall make available to each early childhood program, district, or postsecondary institution a unique pupil identifier for each pupil pursuing an education in a New Hampshire early childhood program, district, or postsecondary institution. The unique pupil identifier itself shall not permit pupil identification within a subcategory including, but not limited to, early childhood program, district, postsecondary institution, sex, age, grade, or county of residence.

(c) The unique pupil identifier shall be requested and maintained by the early childhood program, district, or postsecondary institution. The unique pupil identifier shall remain in the pupil's file throughout his or her academic career in New Hampshire.

(d)(1) Access to the random number generator shall be limited to an early childhood program director or designee, a district superintendent or designee, or a postsecondary institution registrar or designee, and only for pupils pursuing an education in that early childhood program, district, or postsecondary institution.

(2) A parent or legal guardian shall, upon request made in person to the early child program director, school district superintendent for the district which the child last attended, or postsecondary institution registrar, have access to their child's unique pupil identifier and their child's data maintained in the data warehouse. A person who is 18 years of age or older shall, upon request made in person to the early child program director, school district superintendent for the district which the person last attended, or postsecondary institution registrar, have access to their unique pupil identifier and their data maintained in the data warehouse.

(3) Any person who knowingly violates the provisions of this subparagraph is guilty of a class B felony and may be subject to involuntary termination of employment.

(e) The random number generator shall create and maintain a comprehensive audit trail for all users accessing the random number generator.

(f) The data warehouse shall create and maintain an audit trail for all users accessing secure information.

(g) No person, including an individual, business, government, or governmental entity, shall require an individual to provide a unique pupil identifier as a condition of doing business, providing a service, or receiving a benefit of any kind, except as provided in RSA 193-E:5, I(c). Any person or entity that knowingly violates the provisions of this subparagraph shall be liable for actual damages or \$25,000, whichever is greater, for each violation. Each denial of services or benefits shall constitute a separate offense under this subparagraph.

(h) If a pupil's records become part of an administrative action outside of the pupil's early childhood program, district, or postsecondary institution, or a part of any judicial or quasi-judicial proceeding, the part of the record containing the pupil's unique pupil identifier shall be redacted by the early childhood program, district, or postsecondary institution prior to release.

(i) The information maintained in the data warehouse shall be available to the department of education and to the public using the data maintained by the department of education. No personally identifiable information shall be required as a condition of access or usage under this subparagraph, nor shall such access or usage be tracked. Under no circumstances shall the unique pupil identifier be made available to the public.

(j) Information maintained in the random number generator shall be exempt from the provisions of RSA 91-A.

(k) Authorized personnel at the department of education shall administer and maintain the unique pupil identification system.

(l) The department of education shall provide no personally identifiable information collected pursuant to this chapter, including but not limited to name, date of birth, or social security number to any person or entity, other than an early childhood program, district, or postsecondary institution authorized to access this data, absent a court order. Under no circumstances shall personally identifiable information or the unique pupil identifier be provided to any person or entity outside of New Hampshire. Any person who knowingly violates this provision is guilty of a class B felony and may be subject to involuntary termination of employment.

(m) Early childhood programs not receiving Head Start or child care scholarship funds, private schools comprised of kindergarten through grade 12, and all private postsecondary institutions may participate in the data warehouse and random number generator. Participating early childhood programs may volunteer to include data for pupils for which Head Start or child care scholarship funds are not received. Permission of a parent or legal guardian of a pupil enrolled in an early childhood program shall be obtained before a pupil may participate in the data warehouse and random number generator. For the purposes of this section, such voluntary participating early childhood programs shall be included in the definition set forth in RSA 193-E:4.

(n) Notwithstanding subparagraphs (a)-(m), to enable the department of education to ensure the accuracy of the data, the commissioner of the department of education may, in writing, grant individuals access to the data warehouse, including but not limited to, access to the unique pupil identifier for the purpose of connecting information in the warehouse with the random number generator.

(o) At the request of an early childhood program, district, or postsecondary institution, the department of education shall provide pupil-level data from the unique pupil identification system to an early childhood program, district, or postsecondary institution for pupils pursuing an education in that entity. The department shall not provide any personally identifiable pupil-level data to an entity not directly involved with the pupil's education.

(p) New Hampshire home educated pupils pursuing an education in a postsecondary institution who have not been assigned a unique pupil identifier may, without penalty, opt out of being included in the unique pupil identification system for postsecondary pupils.

(q) Nothing in this chapter shall prohibit institutions in the university system of New Hampshire and the community college system of New Hampshire from exchanging data between themselves without the consent or involvement of the department of education.

II. Notwithstanding RSA 193-E:3, II, the legislative oversight committee established in RSA 193-C:7 shall perform any revisions to this section through legislation filed for that purpose.

III. Any contracts or agreements necessary to implement the provisions of this section shall be approved by the governor with the consent of the executive council.

Source. 2004, 147:3, eff. Aug. 1, 2004. 2010, 356:3, eff. Sept. 18, 2010. 2012, 224:1, 2, eff. Aug. 14, 2012; 247:24, eff. Aug. 17, 2012.