

## GUIDELINES FOR PASSIVE CONSENT

Based on recent change to state law,<sup>1</sup> CDE has determined that under certain circumstances LEAs conducting the California Healthy Kids Survey (CHKS) have the option of using passive parental consent, rather than active (written) consent as previously required.<sup>2</sup> Under passive-consent procedures, parents/guardians inform the school only if they *don't want* their child to participate in a study (opt out).<sup>3</sup> To adopt passive consent, the following conditions must be met:

- The survey is limited to grades 7 through 12. Passive consent cannot be used below grade 7.<sup>4</sup>
- It is anonymous, confidential, and voluntary. Active consent must still be used if respondent data are linked to a respondent's name in any form or manner, such as in longitudinal tracked surveys.
- The school board formally adopts, in consultation with parents, a written passive consent policy for the administration of the CHKS (and any other survey or test) consistent with California Education Code sections 51513 and 51938(b) and the federal Protection of Pupil Rights Act (PPRA), 20 USC 1232h.
- Parents/guardians are notified in writing at the beginning of the school year about the survey and when it is to be administered, and given a reasonable opportunity to review the survey and to decline their child's participation (opt out).
- Parents/guardians are notified of any substantive changes in survey policies, dates, or content that occur after the initial notification.
- The parental notice contains all the required elements specified in the CHKS Guidebook for protection of human subjects and in the federal Protection of Pupil Rights Act.
- Questions are not added to the survey that elicit reports of parental attitudes or behaviors or any other category that requires active consent under Ed Code 51513 but not exempted under Ed Code 51938.

The following guidelines are designed to help you determine whether you should switch from written to passive consent and the steps you should take if you decide to make the change.

### Benefits of Passive Consent

- Passive consent involves less cost and labor, particularly for the classroom teacher.
- If you have *not* been successful in meeting your target sample using written consent, passive consent will likely increase your response rates.
- Research also suggests that passive consent will result in a more representative sample, as many hard-to-reach subgroups, including groups at high-risk of substance use and other problem behaviors, are underrepresented in written consent surveys.<sup>5</sup>

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<sup>1</sup> See Education Code 51938(b), which stipulates: "Notwithstanding Section 51513, anonymous, voluntary, and confidential research and evaluation tools to measure pupils' health behaviors and risks, including tests, questionnaires, and surveys containing age appropriate questions about the pupil's attitudes concerning or practices relating to sex may be administered to any pupil in grades 7 to 12, inclusive, if the parent or guardian is notified in writing that this test, questionnaire, or survey is to be administered and the pupil's parent or guardian is given the opportunity to review the test, questionnaire, or survey and to request in writing that his or her child not participate."

<sup>2</sup> Written consent requirements and strategies are detailed in the CHKS Guidebook, available online at [www.wested.or/hks](http://www.wested.or/hks).

<sup>3</sup> As described in the CHKS Guidebook, under active-consent procedures parents must confirm in writing that they consent or not, usually by signing and returning a form. If a form is not returned, it must be assumed that parental permission is not granted.

<sup>4</sup> Education Code 51938(b) authorizes passive consent only for grades 7 through 12 (see note 1).

## Considerations for Changing from Active to Passive Consent

- **Written consent provides extra protection** against surveying a student whose parents did not receive notification or did not approve of participation but failed to inform the school. This extra protection may be important if risk behavior surveys are a sensitive issue in your community.
- If passive consent reduces the burden on the classroom teacher, **schools must take special precautions** to demonstrate that they made every reasonable effort possible to inform parents about the survey (and any subsequent changes) and to give them opportunities to opt out.
- If your sample changes (e.g., becomes more representative), it will **complicate interpretation of current trends**. Did student behavior change or the sample? Most research suggests reported AOD use will increase. WestEd will provide talking points to address this issue.
- **If you have been meeting your target response rates using written consent**, you might want to continue using it to avoid the issues listed above, especially if your district will still need to use written consent with 5<sup>th</sup> grade.

## Recommendations for Passive Consent Implementation

Survey procedures must ensure that parents receive the consent materials, pay attention to them, and have sufficient time and opportunities to refuse participation. To assure PPRA compliance and reduce the risk of inadvertently surveying a child without parent permission, we recommend the following:

- **Stress that survey participation is voluntary in all communications.** This is a key requirement for the use of passive consent procedures in the PPRA. Notify students in writing and verbally (before survey administration) that they have the right to decline participation and to not answer any question that makes them uncomfortable. Make sure nothing is done that might cause a student to feel uncomfortable if he doesn't want to participate.
- **Send all consent information and forms via a method that guarantees receipt**, such as by mail. Preferably, use a method that documents receipt. For example, the information can be put into a parent handbook that the parent signs for.
- **Use multiple contact techniques.** Do everything possible to insure parents receive notification.
- **Make sure all materials are language appropriate** for parents with limited English reading ability.<sup>6</sup>
- **Make disapproval notification convenient.** Again, use multiple venues: a written form that can be turned into a teacher, a phone number to call, or email address. Each channel should reach a single person or office, identified in district policies, responsible for monitoring consent. This will help avoid parent refusals from slipping through the cracks.
- **Document** all your efforts to notify parents.

***For more information about consent procedures,  
call your regional CHKS advisor at 888.841.7536.***

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<sup>5</sup> The application of active-consent procedures to anonymous, voluntary surveys with rigorous data safeguards and minimal risks to students—such as the CHKS—has been criticized for jeopardizing access to essential information by imposing overly rigid, stringent, and costly consent procedures.

<sup>6</sup> CDE policy is that, in addition to English, notification must also be in each primary language other than English where 15 percent of the students speak that primary language.