

DACs,

As mentioned in the NSCAS Regional Workshops in October, NDE has been working with the US Department of Education to ensure that NDE and Nebraska districts are fully compliant regarding federal privacy laws concerning non-test information provided to third parties when administering the ACT to third-year cohort students in the spring of 2024.

Finalizing this guidance has taken longer than anticipated, but NDE wanted to ensure we are protecting Nebraska students' privacy and making the logistical difficulties for districts/schools as manageable as possible. Thanks for your patience as we work towards both of those goals.

### **Summary**

In order to be compliant with federal privacy law, NDE and districts must do the following:

- Ensure the parents/guardians of third-year cohort students, under 18 years of age, know that the ACT Interest Inventory is optional and parents have access to review the questions of the ACT Interest Inventory prior to a student being asked to fill out the inventory.
- Ensure the parents/guardians of third-year cohort students, under 18 years of age, have provided consent for students to opt into the Educational Opportunity Service (EOS) and/or to request score reports be sent to up to 4 college(s).
  - ACT is prohibited from providing scores to colleges or information from the EOS service to third-parties without consent.
  - Currently, ACT's processes are automated. There are no technological solutions that can be instituted in time for the 2024 spring ACT administration. ACT cannot suppress the sharing of score reports and/or information to third parties if a student under 18 years of age signs up to send score reports to colleges, or to participate in EOS and does not have consent.
  - Districts must seek consent for non-test information for students under 18 years of age that are required to take the ACT. Districts must provide guidance for students without consent and identify said students in the Pearson Access Next (PA Next – The ACT test management platform).

### **Guidance**

#### **Interest Inventory**

- All parents/guardians should be provided information about the ACT Interest Inventory and access to the questions before students are asked to complete the inventory.
- NDE has included a section in the sample parental consent document that meets this requirement. The information is also in the next bullet as districts may want to consider including this information in other forms of communication to third-year cohort parents (email, newsletter, etc.)
- ACT Interest Inventory (Non-Tested)
  - Nebraska students will have access to information for planning beyond high school by completing the non-test portions of the ACT. The ACT Interest Inventory is completed prior to the test date and is considered to be part of the “non-test” portion of the assessment. In completing the non-test portions, students will provide information

which will result in personalized career information and a comprehensive profile for colleges which demonstrates work done in high school as well as future plans. As part of the Interest Inventory, students are asked questions related to interest in postsecondary education, educational needs and interests, factors influencing college choices, etc. The interest inventory questions are optional and can be found in the document [Taking the ACT, https://www.act.org/content/dam/act/secured/documents/TakingTheACT-StateandDistrict.pdf](https://www.act.org/content/dam/act/secured/documents/TakingTheACT-StateandDistrict.pdf). Parents can direct their student to not participate in the interest inventory or skip specific questions.

## Parental Consent for EOS and Score Requests

### Paper Testers

- The pretest portion of the exam, where students have the opportunity to opt into EOS, and provide a list of college(s) where scores should be sent, must be completed at the examinee's school prior to the test date. NDE recommends that students under 18 years of age who do NOT have consent complete the pretest portion of the exam at a different time and/or location than students that do have consent. The separation of these two cohorts will help test administrators confirm that the students are, or are not, completing the specific sections of the pretest activity that impact EOS opt in and scores being provided to third parties.
- Students **without** consent should be instructed to leave blank the following blocks in the pretest portion of the exam:
  - Block L: This block allows students to opt into ACT EOS
  - Block M: Students should mark the "Non-reporting Option"
- Adults should move around the room to monitor that students are following directions for these two blocks.
- When students **without** consent have completed the pretest portion of the exam and return the answer document, adults should verify that the students did not opt into ACT EOS or request that score reports be sent to colleges (Blocks L & M)
- If a student **without** consent has opted into the ACT EOS or requested score reports be sent to colleges, the answer document should be returned to the student, and the proctor must request the student change the responses.
- Schools may want to group students without consent when administering the ACT so that an adult can once again verify the student did not opt into ACT EOS or request scores be sent to colleges.

### Online Testers

- The pretest activity for online testers is completed in Student Web Services (SWS), which is a separate system from the actual test administration application, Test Nav. Unlike students who are testing with paper, online testers can complete the pretest activity from their home, and this process can be completed up to 4 days after the test is administered. Therefore, NDE recommends testing staff retain the Non-test Instructions for Online Testing Form until the examinee returns a consent form. Students without consent could be guided through the pretest portion of the test at school as described above. If the school guides all

students through the pretest portion of the test, NDE recommends that students under 18 years of age **without** consent complete the pretest portion of the exam at a different time and/or location than students that do have consent. The separation of these two cohorts will help test administrators confirm that the students are, or are not, completing the specific sections of the pretest activity, which impact EOS opt in and score reports being provided to third parties.

- Students **without** consent should be instructed to skip questions related blocks in the to the following topics:
  - Opting into ACT EOS
  - Requesting score reports be sent to colleges or scholarship agencies

#### Tracking Students **Without** Consent

- Districts must indicate that a student does not have consent in the PA Next system in the State Use Question section.
  - The first question for each student in the State Use Questions will allow districts to indicate they have not received consent from the parent/guardian.
  - The question will read, “Has the school received parental consent that allows ACT to share scores and information with third parties?”. The answer options are as follows:
    - Default will be “blank”.
    - “The student is not yet 18 years of age and the school has NOT received parental consent to release scores or information to third parties.”
  - This question only needs to be answered for students **without** consent.
  - If the student **has** consent, the question should be left blank. Blank answers are understood to mean that the student has consent.
  - NDE will let districts know when the State Use Questions are available in PA Next. Districts should make a plan to make sure Question 1 is answered for all students that do not have consent.
  - The last day to enter answers to State Use Questions is 5/11/20.

#### Consent Forms

- NDE has provided a sample form for districts. Districts can use the form as presented or can customize the form to suit the district’s objective.
- NDE encourages districts to have their own legal counsel review the sample form before using.
- Districts should keep completed consent forms on file at the school or district level.
- The sample form is attached to this email and will be added to the [NDE ACT](#) page.
- NDE has contracted for a Spanish translation of the sample form. It is available on the [NDE ACT](#) page now.

#### Additional Information

- NDE understands the limited time and complex logistics our districts may face, but NDE still expects all districts to follow the provided guidance to the best of their ability.

- In future years, districts may attempt to obtain consent from third-year cohort students at the beginning of the school year. This process could be digital if districts have reliable methods to obtain digital consent.
- As NDE and schools navigate this additional requirement, we will track questions and share useful new information with all DACs.