



November 15, 2021

Andrew D. Wold
General Counsel
Minnesota Office of Higher Education
1450 Energy Park Drive, Suite 350
St. Paul, MN 55108
andrew.wold@state.mn.us

Re: The Office of Higher Education’s “Get Ready” Program

Dear Mr. Wold:

Earlier this year, on behalf of a client, we investigated the imposition of a survey on minor students at the TrekNorth charter school in Bemidji. TrekNorth reported to us that it was tasked with administering a survey to high school students as part of the Office of Higher Education’s (“OHE”) “Get Ready” program. Thus, we sought data from the OHE related to this survey, which OHE provided.

The responses we have received from OHE and TrekNorth indicate to us that OHE may not have statutory authority for some of the questions the survey asks. We hope you can satisfactorily answer our follow-up questions to avoid possible litigation related to OHE’s source of authority for the survey’s sensitive questions of minor students.

Concerns About the Get Ready Survey

To be frank, the Get Ready program’s survey concerns us. First, based on the imposition of the survey by TrekNorth, participation does not appear to have been voluntary for the students who were subjected to it, nor were parents afforded an opt-out or an opportunity to consent to the imposition of the survey. Second, it is unclear under which state law authority the survey was conducted, given the type of questions asked. Third, it is unclear how the survey complied with legal privacy protections for pupils and their families.

The survey, imposed at TrekNorth in December 2020, asked minor students to “describe how you fit into these categories for societal identity”:

- Racial Identity
- Ethnic Identity
- Sexual Orientation Identity
- Gender Identity

- Ability Identity
- Religion/Spirituality Identity
- Nationality Identity
- Socioeconomic Status Identity
- Age Identity

These questions relate to highly sensitive data about minor students, which data is protected under the Pupil Protection Rights Amendment to the Federal Electronic Rights Privacy Act (“PPRA”). Under the PPRA, where federal dollars are implicated by the imposition of a survey, minor students may not be compelled to participate in surveys related to “(1) political affiliations or beliefs of the student or the student’s parent; (3) sex behavior or attitudes; or (7) religious practices, affiliations, or beliefs of the student or student’s parent... without the prior written consent of the parent.” 20 U.S.C. § 1232h(b). Even adult students or emancipated minors must provide their own written consent prior to being required to submit to such an examination. *Id.*

Here, we understand that the Get Ready program uses federal dollars which would trigger the PPRA’s protections. The survey questions related to “Sexual Orientation Identity,” “Gender Identity,” and “Religion/Spirituality Identity” appear to require consent pursuant to the PPRA—consent which was not obtained by TrekNorth from our client, whose student was subjected to this survey. We have, at present, no indication that prior consent in any form, whether written or otherwise, has been granted or sought by any school before requiring student compliance with the survey.

Further, we understand that Get Ready’s mission declares that it is intended to prepare Minnesota students for the academic rigors associated with higher education. OHE’s website describes it as “...a federally-funded college and career readiness program...” which “...helps students from low-income backgrounds, indigenous communities, and communities of color realize their aspirations through education and career advancement.”¹ But the statutory basis for imposing this survey, and the survey’s relationship to that declared mission, is unclear to us.

For example, Minnesota law requires school districts to “assist all students... to explore their educational, college, and career interests, aptitudes, and aspirations and develop a plan for a smooth and successful transition to postsecondary education or employment.” Minnesota Statutes §120B.125(a). But if the Get Ready survey is premised on this statutory authority, its questions do not appear to relate to that authority. Viewed in a light most favorable to OHE, the responses related to “societal identity” demanded in the December 2020 survey and quoted above appear irreconcilable with either the PPRA or

¹ <http://www.getready.state.mn.us//gPg.cfm?pageID=1615>

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Section 120B.125. If OHE has identified a meaningful link between demanding a student's "gender identity" or "socioeconomic identity" and "...a comprehensive plan to prepare for and complete a career and college ready curriculum by meeting state and local academic standards," it is unclear from the survey's text.

Given our concerns, we hope you can answer the following questions about the survey and how it complies with state and federal law. We hope your answers to these questions will help avoid any litigation related to that source of authority.

Questions Related to Authority for the Survey

After reviewing TrekNorth's responses to us and the OHE's data related to the survey, we seek answers to the following questions:

- (1) What is the source of legal authority OHE relies upon for the administration of the Get Ready survey?
- (2) If OHE claims that Minn. Stat. § 120B.125 is the source of statutory authority for the survey, how do questions about minor students' racial, socioeconomic, sexual orientation, gender, or religious identity relate to that statute; and if they do, what language in the statute do these questions relate to?
- (3) What steps must schools which impose the Get Ready survey, or the OHE, take to ensure that parents (a) are informed of the questions it asks, and (b) have an opportunity to opt out of the survey for their minor students?
- (4) How does OHE ensure that school comply with the PPRA when administering this survey?

We look forward to OHE's answers to these questions. We hope there is an explanation for the imposition of this survey which might eliminate the need to bring a *quo warranto* or declaratory judgment action related to its imposition.

Very truly yours,



James V. F. Dickey
Senior Trial Counsel

cc: Douglas P. Seaton, Esq.
Gregory J. Joseph, Esq.