

A S C A W E B I N A R S E R I E S



**AMERICAN
SCHOOL
COUNSELOR
ASSOCIATION**

Legal/Ethical Implications of the Hatch Amendment

Webinar Presenters:

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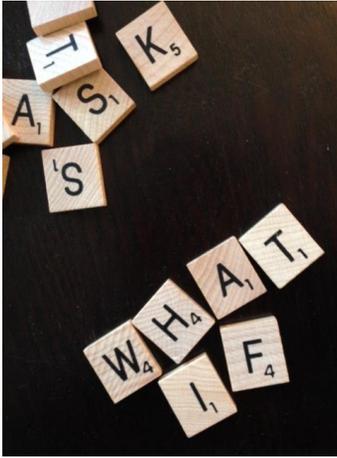
A S C A W E B I N A R S E R I E S

Learning outcomes:

1. Identify and discuss the eight protected areas under Protection of Pupil Rights Amendment (PPRA).
2. Discuss the legal and ethical considerations in giving universal screenings and needs assessments.
3. Describe best practices and policy recommendations for the administration, as well as response to and storage of screening and assessment results.

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<https://images.app.goo.gl/fnqj59e9hiHDwwAA6>

Could this happen to you?

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CASE STUDY

- Counselor A is concerned about student mental health in the wake of the global health crisis, our country's racial reckoning, the election, etc.
- Counselor A works with their counseling colleagues to create and then distribute a voluntary Google survey to students asking about significant anxiety, sadness, depression, etc.

All good, right?!



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And, we're going to tell you why!



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"Hatch Amendment" "Grassley Amendment"
"Tiahrt Amendment" "PPRA"



PPRA

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The Protection of Pupil Rights Amendment (PPRA,)

Federal Law

Gives parents rights to have notice and consent before their child can be asked about certain subjects to include mental health, political affiliation, religious affiliation, sexual behavior and attitudes and much more.

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**Difference: Protection of What
is collected (FERPA) and what
might be collected (PPRA)**

And then there is COPPA

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PPRA (the Hatch Amendment)

- 1) Students do not abandon their privacy rights at the schoolhouse door.
- 2) Parents relinquish control 35 hours a week but not to be the guiding voice.
- 3) Family Educational Rights and Privacy Act, Children's Online Privacy Protection Act of 1998 (COPPA)

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A S C A W E B I N A R S E R I E S

The 8 Protected Areas

1. Political affiliations or beliefs
2. Mental or psychological problems
3. Sex behavior or attitudes
4. Illegal, anti-social, self-incriminating, or demeaning behavior
5. Critical appraisals of other individuals with whom respondents have close family relationships

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The 8 Protected Areas, cont...

6. Legally recognized privileged or analogous relationships (lawyers, physicians, ministers)
7. Religious practices, affiliations, or beliefs
8. Income (other than that required by law to determine eligibility for participation in a program or for receiving financial assistance under such program)

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Required Parental and Student Notification

1. General notification
2. Notification of specific events
3. Notification of policy

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General Notification

School districts and local education agencies (LEAs) must make parents and students aware of their general rights under PPRA.



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Notification of Specific Events

1. Activities involving the collection, disclosure, or use of personal information collected from students for *marketing purposes* or for selling that information, or otherwise providing it to others for that purpose;
2. **The administration of any survey containing one or more of the eight protected areas**
3. Any nonemergency, invasive *physical examination* or screening that is: (1) required as a condition of attendance; (2) administered by the school and scheduled by the school in advance; and (3) not necessary to protect the immediate health and safety of the student, or of other students.

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Notification of Policy

Parents and students must be notified annually of the policies LEAs are required to develop, in consultation with parents under PPRA. Notification must be provided at the beginning of the school year and within a “reasonable time period” of any substantive change in policy.

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Developing Policy



LEAs must develop policy around PPRA in consultation with parents. The policy must contain information about student privacy, parent access to information, and administration of certain physical exams to minors.

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Policy Must Include:

1. The right of a parent/student to inspect a survey created by a 3rd party before it is administered with a reasonable time period;
2. protection of student privacy for surveys containing one or more of the protected areas;
3. the right of the parent/student to inspect instructional material used as part of the educational curriculum with a reasonable period of time;

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Policy Must Include:

4. the administration of physical exams or screenings of students;
5. the collection, disclosure, or use of personal information collected from students for the purpose of marketing or for selling that information;
6. the right of a parent/student to inspect any instrument used in the collection of personal information, before the instrument is distributed

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Needs Assessments and Universal Screeners

Needs assessments and universal screeners that gather information by reviewing existing data or input from teachers and other educators does not require consent.

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Needs Assessments and Universal Screeners

- Counselor developed surveys or assessment tools (i.e. a depression screener) that include one question from one of the eight protected areas require consent. If students are required to complete the survey, active consent is required. If the survey is voluntary, passive consent is permitted.
- Parents must be given the opportunity to inspect any surveys prior to administration.

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Climate Surveys

As long as the climate survey does not address any of the protected topics, consent is not required. School officials may want to notify parents to include them in the process.

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Next Steps

- **Research** your LEA's policies re: surveys and PPRA
- **Review** your surveys for PPRA conflicts
- **Reach out** to your administration/legal team to consult on best practices
- **Revise** (future) surveys and consent processes as needed
- **Raise awareness** in your school community re: PPRA and related LEA policies



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Stay tuned!

More information will be forthcoming from ASCA on survey language and best practices!



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- 1) You don't have to store surveys but if you do follow district policy, state laws and FERPA.
- 2) You would not delete if there is any chance a parent's rights were not followed.
- 3) Parents have rights to records, surveys are records.

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Cases Providing Guiding Principles



A wooden gavel is positioned diagonally across the frame. In front of the gavel's head is a small, dark wooden sign with the words "PRIVACY LAW" written in white, bold, capital letters. The background is a plain, light-colored surface.

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The graphic consists of a blue rectangular background. In the center, there is a large, 3D-style yellow question mark. Below it are two orange cylinders. The top cylinder is slightly larger and has the word "QUESTION" written in white, bold, capital letters. The bottom cylinder is smaller and has the phrase "WE HAVE THE ANSWER" written in white, bold, capital letters.

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