

THE RUTHERFORD INSTITUTE

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Via E-Mail and U.S. Mail

June 3, 2011

The Fitchburg School Committee
376 South Street
Fitchburg, MA 01420

Re: *Proposed Consent Policy*

Dear Committee Members:

The Rutherford Institute is continuing to work with Arlene Tessitore to resolve the administration of highly intrusive surveys to public middle school students without parental knowledge or consent. Unfortunately, we have not received any response from the Committee to our prior letter, dated April 28, 2011.

I will not here repeat all of the objections set forth in said letter, but suffice it to say that the administration of the Youth Risk Behavior Survey (YRBS) at Memorial Middle School was a direct violation of the Protection of Pupil Rights Amendment (20 U.S.C. § 1232h *et seq.*; 34 C.F.R. 98.4(a)), which forbids school officials from requiring students to submit to these types of surveys unless their parents or guardians have given prior written consent. Under a plain reading of the statute and implementing regulations, the “passive consent” procedure which has been employed by Fitchburg Schools for purposes of the Youth Risk Behavior Survey is clearly impermissible.

Moreover, we and many parents believe that it is an affront to basic parental rights for schools to use “passive consent” for any kind of student survey or examination. After all, it is the parent—and not the state or its agencies—who bears the ultimate responsibility for each student’s long-term welfare and development and who, in most cases, is in the best position not only to assess but also to influence the behaviors and risks of these students. The administration of surveys with such intrusive, insensitive and, in some cases, age-inappropriate questions to developing young people without parental consent or knowledge undermines the essential parent-child relationship by introducing topics that should be the subject of private, familial

conversation. You should be aware that this intrusion upon parental authorities has constitutional implications.

In short, parents send their children to public schools to receive an education, not to become subjects of governmental data mining. In every instance, it should be left to the parents, who know and love their children best, to decide whether the purposes and goals of proposed surveys warrant the associated intrusion upon their children's privacy and the potential desensitization of their children to sensitive subjects.

In an effort to ensure that schools in your area do not repeat the mistake that has been made here, we are pleased to introduce a proposed policy to govern parental consent. The language we propose for addition to the Fitchburg School policies is as follows:

No student shall participate in any survey, assessment, analysis or evaluation that concerns the issues listed in 20 U.S.C.S. 1232h(b), nor be subjected to any medical screening, testing or evaluation not otherwise required by state law, unless the school has obtained informed consent in writing from that student's parent or guardian. Such written informed consent must be specific to the survey, assessment, analysis or evaluation being performed.

We hope that you will consider adopting this policy as a means of protecting the long-term best interests of your students and preserving the parental authority that is, in fact, the best way to ensure that students stay safe and healthy.

Finally, please be informed that in light of your failure to respond to our letter or to otherwise adequately address Mrs. Tessitore's concerns, Mrs. Tessitore has filed a formal Complaint with the federal Family Educational Rights and Privacy Act Office. We believe, however, that your prompt adoption of our proposed policy would constitute a solid demonstration of your good faith in seeking to ensure that this incident is not repeated.

Sincerely yours,

Rita Dunaway, Esq.

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cc: Francis G. Thomas, Principal, Memorial Middle School
Arlene Tessitore