

THE RUTHERFORD INSTITUTE

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June 3, 2011

Via Fax and U.S. Mail

Ms. Ellen Campbell, Director
Family Policy Compliance Office
United States Department of Education
400 Maryland Avenue SW
Washington, DC 20202

Re: *Violation of Protection of Pupil Rights Amendment in Fitchburg, MA*

Dear Ms. Campbell:

The Rutherford Institute¹ represents Arlene Tessitore, whose two middle school-age daughters were recently forced to participate in highly intrusive surveys at school without parental knowledge or consent. Please consider this letter Mrs. Tessitore's formal complaint against The Fitchburg School Committee pursuant to 34 C.F.R. 98.7 for violation of the Protection of Pupil Rights Amendment and implementing regulations.

On February 1, 2011, Mrs. Tessitore's two minor daughters, seventh grader [REDACTED] and eighth grader [REDACTED], who both attend Memorial Middle School in Fitchburg, Massachusetts, were told by their respective teachers, Mr. Mike Petrides and Mr. Mike Jacobs, to complete the Youth Risk Behavior Survey (YRBS). Mrs. Tessitore was unaware that the survey was being administered at school.

When [REDACTED] asked to be excused from the test, seeing that the cover page was labeled "voluntary," Mr. Petrides instructed her to sit down and complete the survey anyway. [REDACTED] also informed her teacher, Mr. Jacobs, that her mother would not approve of her participating in the survey. The teacher responded by advising [REDACTED] to take the issue up with the school counselor and to complete the survey anyway.

¹ The Rutherford Institute is a civil liberties organization that provides free legal representation to those whose civil rights are threatened or infringed.

Both girls were deeply disturbed by the content of the survey and the fact that they were effectively coerced to participate in it, and for good reason. The questions asked in the survey included:

- “Have you ever tried to kill yourself”
- “Have you ever sniffed glue, or breathed the contents of spray cans, or inhaled any paints?” and
- “With how many people have you had sexual intercourse?”

The survey, in its entirety, is attached hereto for your reference.

When the girls reported the incident to their mother, Mrs. Tessitore contacted school officials to determine why they would administer such an intrusive, sensitive survey absent any parental consent whatsoever. Mrs. Tessitore’s efforts to resolve the matter included phone calls and/or e-mails to Violette Belanger, Director for the Alcohol Abuse Reduction Grant, and Kate Martin, Director of Grants at Fitchburg Public Schools, as well as conversations with Fran Thomas, Principal of Memorial Middle School.

According to school officials, the school’s administration of the YRBS is required by the district to satisfy grant requirements. Mrs. Tessitore learned that the survey is administered by a social services agency entitled LUK Inc. under a federal grant program. She was informed that the school had utilized a “passive consent” procedure by sending students home from school with a form for parents to complete if they objected to their children’s participation in the survey. If parents did not return the signed form to school, they were *presumed* to have given consent for their children to participate.

The use of this procedure for a survey with questions that clearly bring it within the purview of the Protection of Pupil Rights Amendment, 20 U.S.C. § 1232h, is, of course, specifically prohibited by federal law and the implementing regulations set forth in 34 C.F.R. § 98.4(b). However, the violation is compounded by the fact that Mrs. Tessitore had never received even the “passive consent” opt-out form, and so had no hope of even knowing that the survey would be administered to her minor daughters. In fact, after consulting with other students and parents and interviewing several teachers on May 2, 2011, Mrs. Tessitore learned that one teacher had not received the packet of information concerning administration of the survey and thus had failed to even distribute the passive consent forms.

Despite Mrs. Tessitore’s persistent efforts to resolve this issue with school officials, their responses have been either defensive or lacking altogether. For instance, the Fitchburg School Committee refused to even respond to a letter sent on April 28, 2011, by The Rutherford Institute at Mrs. Tessitore’s behest with the goal of resolving the matter. The Committee has yet to manifest any intention of resolving this issue or admitting its error. As far as Mrs. Tessitore is aware, the School Committee maintains

that it is appropriate to administer surveys such as the YRBS without first obtaining written parental consent.

Meanwhile, the invasive surveying of students on highly sensitive topics without parental consent continues at Memorial Middle School. On March 29, more than a month after Mrs. Tessitore expressed her concerns to school officials, [REDACTED] Webber was asked to participate in a Youth Program Survey in her health class. This survey was administered by an agency called ProHealth, which had been invited into the school by school officials, and it contained intrusive and inappropriate true/false questions similar to those asked in the YRBS, including:

- “I feel comfortable talking with any partner I have about using a condom” and
- “I have had oral sex at some point in my life”

Again, Mrs. Tessitore had no prior knowledge that this survey was being administered at school, and she certainly did not give and would not have given her consent for her daughters to participate therein. This test also asked students to identify themselves by their first names and last name initials, and month and year of birth. When Mrs. Tessitore’s eighth-grade daughter stated that she would not complete the survey, her teacher took her outside the classroom and inquired as to her reasons for not wanting to participate.

In May, the teacher of that same Health class, Mrs. Meleedy, announced that she would administer a “Post Test” survey asking the same questions as were asked in the March 29th survey. [REDACTED] asked to be excused from taking the survey and pointed out the lack of parental notification. The teacher then proceeded to call the guidance office to report [REDACTED]’s refusal to take the survey. [REDACTED] felt extremely uncomfortable having the attention of the entire class, the teacher, and the guidance counselor focused on her.

It is clear that children in Fitchburg, Massachusetts, including Mrs. Tessitore’s own two daughters, are effectively being exploited for data by social services agencies in a quest for federal funds that violates both specific federal statutes and more general constitutional protections of parental rights and personal privacy.

Quite simply, 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

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knowledge undermines the essential parent-child relationship by introducing topics that should be the subject of private, familial conversation.

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. This was clearly the collective intent of Congress in passing the Pupil Privacy Rights Amendment, and the circumvention of that law by the Fitchburg School Committee and Memorial Middle School must be stopped immediately.

On behalf of Mrs. Tessitore and her daughters, we hereby ask you to pursue all available means of correcting this situation and requiring the Fitchburg School Committee and Memorial Middle School to conform their functions to applicable state and federal law.

Sincerely yours,

Rita Dunaway, Esq.

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Enclosure