

Mindsets, Noncognitive and Socioemotional Measurement in the National Assessment of Educational Progress
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There is abundant evidence in the education community's news articles and from the National Assessment Governing Board that the plan for the National Assessment of Educational Progress ("NAEP," or "the nation's report card") will be to expand assessment beyond academic content knowledge to include noncognitive, socioemotional parameters:

[Education Week Article](#)

"It's not a question of whether schools are going to do more working on noncognitive factors," he said, 'it's of whether we are going to have any instrumentation at all that lets us know which things are working and which things are not.'"

Researchers from the Educational Testing Service described the project at a symposium here last month at the annual conference of the Association for Psychological Science. The [background survey will include five core areas](#)—***grit, desire for learning, school climate, technology use, and socioeconomic status***—***of which the first two focus on a student's noncognitive skills, and the third looks at noncognitive factors in the school***. These core areas would be ***part of the background survey for all NAEP*** test-takers. In addition, questions about other noncognitive factors, such as self-efficacy and personal achievement goals, may be included on questionnaires for specific subjects to create content-area measures, according to Jonas P. Bertling, ETS director for NAEP survey questionnaires. (Emphasis added)

[NAGB Document \(p. 2\)](#)

Core Contextual Modules: Update on Reporting and Dissemination Committee Review Process and Timeline for Item Development

R&D will have reviewed the core contextual modules three times before any are included in the 2017 NAEP operational administration. These proposed modules include the following: ***(1) socio-economic status; (2) technology use; (3) school climate; (4) grit; (5) and desire for learning***. The Committee's first review occurred in August 2014, as part of the board meeting. In reviewing the feedback from that session, the overall focus of the comments seemed to lie in ensuring that the questions are inclusive, accessible, and more positive. (Emphasis added).

Sadly, NAGB seems to be assuming that its plans are perfectly legal, when they are not. There are significant constitutional concerns with this approach:

- 1) The word "education" does not appear at all in the US Constitution. That the US Department of Education even exists is a clear violation of that document's 10th Amendment:
"The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

- 2) To then have this unconstitutional federal agency collecting socioemotional data on innocent American citizens, especially children, also appears to also be a blatant violation of the 4th Amendment to the Constitution:

“The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.” (Emphasis added)

This expansion of NAEP into the socioemotional realm also strongly appears to violate federal law in one or both of two ways:

- 1) If these proposed questions are part of the actual test, they violate the federal statute governing the NAEP, currently known as the Education Sciences Reform Act (ESRA) [The proposed reauthorization of ESRA, the Strengthening Education Through Research Act (SETRA - S 227), does not change this provision]:

National Assessment of Educational Progress (NAEP) [20 USC §9622 \(b\)\(5\)\(A\)](#)

(5) Requirement

In carrying out any assessment authorized under this section, the Commissioner for Education Statistics, in a manner consistent with subsection (c)(3) of this section, shall-
use widely accepted professional testing standards, objectively measure academic achievement, knowledge, and skills, and ensure that ***any academic assessment authorized under this section be tests that do not evaluate or assess personal or family beliefs and attitudes*** or publicly disclose personally identifiable information;
(Emphasis added)

- 2) If the proposed non-cognitive questions are part of a so-called “background survey,” then they appear to violate this federal statute::

The Protection of Pupil Rights Amendment (PPRA)

20 USC §1232h. Protection of pupil rights

(a) Inspection of instructional materials by parents or guardians

All instructional materials, including teacher's manuals, films, tapes, or other supplementary material which will be used in connection with any survey, analysis, or evaluation as part of any applicable program shall be available for inspection by the parents or guardians of the children.

(b) Limits on survey, analysis, or evaluations

No student shall be required, as part of any applicable program, to submit to a survey, analysis, or evaluation that reveals information concerning-

- (1) political affiliations or beliefs of the student or the student's parent;
- (2) mental or psychological problems of the student or the student's family;***
- (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;
- (6) legally recognized privileged or analogous relationships, such as those of lawyers, physicians, and ministers;
- (7) religious practices, affiliations, or beliefs of the student or student's parent; or

(8) income (other than that required by law to determine eligibility for participation in a program or for receiving financial assistance under such program), without the prior consent of the student (if the student is an adult or emancipated minor), or in the case of an unemancipated minor, without the prior written consent of the parent. (Emphasis added)

Alarming, despite its prohibition of assessments that “evaluate or assess personal or family beliefs and attitudes,” SETRA also seeks to codify “social and emotional” research (Sec. 132):

“...and which may **include research on social and emotional learning**, and the acquisition of competencies and skills, including the ability to think critically, solve complex problems, evaluate evidence, and communicate effectively...” (Emphasis added).

This federal attempt to explore and document the psyches of our children is problematic – and completely unacceptable in a free society – for numerous reasons. For instance (see others in [Child Mental Health Quotes and References](#)), socioemotional outcomes are extremely subjective, and there is still no agreement about their meaning or even their selection over a period of ten years:

Challenges Involved in Infant and Early Childhood Diagnosis

“Diagnostic classifications for infancy are still being developed and validated...”

“Lack of longitudinal outcome studies”

“Broad parameters for determining socioemotional outcomes are not clearly defined”

(National Center for Infant and Early Childhood Health Policy – [Addressing Social Emotional Development and Infant Mental Health in Early Childhood Systems](#) – 2005

<http://files.eric.ed.gov/fulltext/ED496853.pdf> (Emphasis added)

Engage the Community in Collectively Defining SEL Standards

The process of collectively defining standards provides a great way to address the first two pitfalls. ***Developing collective standards and engaging all stakeholders in the process of constructing the standard help to ensure that everyone understands and supports the implementation of the learning standards.*** - [Social and Emotional Learning Research Review: Avoiding Pitfalls](#) – 12/1/2015

To then collect highly sensitive information under extremely subjective criteria and maintain that personal information in a child’s lifelong academic record -- affecting grade advancement, special education referrals, college entrance, and future employment -- is completely unacceptable.

In addition, even key thought leaders who support collecting these data are extremely concerned about the possibility that the information will be used for accountability sometime in the future. Angela Duckworth and David Yeager [listed](#) several problems in this [abstract](#) in the journal [Education Researcher](#) (emphasis added):

Attempts to measure such qualities for the purposes of educational policy and practice, however, are more recent. In this article, we identify serious challenges to doing so...

We first address confusion over terminology, including the descriptor noncognitive. Next, we discuss advantages and limitations of different measures...

...Finally, we discuss how each measure’s imperfections can affect its suitability for program evaluation, accountability, individual diagnosis, and practice improvement.

For example, we do not believe any available measure is suitable for between-school accountability judgments...

...*In addition to urging caution among policymakers and practitioners*, we highlight medium-term innovations that may make measures of these personal qualities more suitable for educational purposes. (Emphasis added)

If subjectivity and potential misuse of this kind of sensitive psychological/socioemotional data were not enough to halt this massive government overreach, there are two other dangers in collecting that should put a halt to this Brave New World endeavor:

- 1) The extraordinary weakening of the Family Educational Rights and Privacy Act (FERPA) in 2012 as outlined in this [Formal Response to the Chief State School Officers' Letter on Student Data Privacy](#)

As documented in the [regulations for FERPA, §99.31](#)

- Individual student data may be released without consent to organizations and entities that have “legitimate educational interests,” which basically means for any reason that a state or the federal governments or researchers or corporations want to use the data in conjunction with any state or federal program.
 - (a) An educational agency or institution may disclose personally identifiable information from an education record of a student without the consent required by §99.30 if the disclosure meets one or more of the following conditions:
 - (1)(i)(A) The disclosure is to other school officials, including teachers, within the agency or institution whom the agency or institution has determined to have legitimate educational interests.
- The regulations give private corporations, foundations, and researchers or even volunteers access to our children’s data without parental consent.
 - (B) A contractor, consultant, volunteer, or other party to whom an agency or institution has outsourced institutional services or functions may be considered a school official under this paragraph** provided that the outside party— (Emphasis added)
 - (1) Performs an institutional service or function for which the agency or institution would otherwise use employees;
 - (2) Is under the direct control of the agency or institution with respect to the use and maintenance of education records; and
 - (3) Is subject to the requirements of §99.33(a) governing the use and redisclosure of personally identifiable information from education records.
- FERPA currently allows data to be given without consent to authorized representatives of the following entities including the US Department of Education, which combined with the cooperative agreement quoted above make the state chiefs letter MEANINGLESS. The authorized representatives include the “contractor, consultant or volunteer” entities quoted above :
 - (3) The disclosure is, subject to the requirements of §99.35, to authorized representatives of—
 - (i) The Comptroller General of the United States;
 - (ii) The Attorney General of the United States;
 - (iii) The Secretary [of Education]; or (Emphasis added)**
 - (iv) State and local educational authorities.
- The regulations give the states and the consortia carte blanche to “legally” give individual student test and other data to the federal government without consent to continue to develop and evaluate the national tests and “improve instruction” meaning the NCLB waivers that require the Common Core standards.

(6)(i) The disclosure is to organizations conducting studies for, or on behalf of, educational agencies or institutions to:

(A) Develop, validate, or administer predictive tests; (Emphasis added).

(B) Administer student aid programs; or

(C) Improve instruction.

- So, even though the letter says the states will comply with current federal law and regulations, nothing prevents the states from entering into an agreement with the consortia and the consortia from “rediscovering” this data to the feds.

(ii) Nothing in the Act or this part prevents a State or local educational authority or agency headed by an official listed in paragraph (a)(3) of this section **from entering into agreements with organizations conducting studies under paragraph (a)(6)(i) of this section and rediscovering personally identifiable information from education records on behalf of educational agencies and institutions** that disclosed the information to the State or local educational authority or agency headed by an official listed in paragraph (a)(3) of this section in accordance with the requirements of §99.33(b). (Emphasis added.)

2) The equally appalling lack of protection of student data by the US Department of Education as unearthed by Rep. Jason Chaffetz (R-UT) as chairman and the rest of the US House Oversight and Government Reform Committee in their [November 17th 2015](#) and [February 2, 2016](#) hearings

- The Committee learned at the November hearing that the US Department of Education:
 - Holds 139 million unique Social Security numbers;
 - Continues to be “vulnerable to security threats” according to the IG, and has repeat findings in annually-required [FISMA audits \[Federal Information Modernization Security Act\]](#);
 - Failed to detect a penetration test of its systems conducted by the IG during its FY2015 FISMA audit;
 - Received an “F” on the Committee’s [FITARA scorecard \[Federal Information Technology Acquisition Reform Act\]](#).
- The Committee learned at the February hearing:
 - The Department of Education’s (ED) Chief Information Officer (CIO) Danny Harris received substantial bonuses despite poor performance in securing IT systems at the Agency and significant ethical lapses in judgment.
 - Despite the IG’s evidence to the contrary, Acting Secretary King asserted that Mr. Harris did not violate any law, regulation, policy, or standard of ethical conduct.
 - Mr. Harris testified his home theatre installation and car detailing activities were “hobbies” and not businesses. The IG testified that these activities qualified as businesses.
 - It was in excess of two years before ED responded to the IG’s initial report of findings and referral for administrative action.
 - The Department of Justice (DOJ) declined to prosecute the IG’s criminal referral and deferred to ED leadership for action. Acting Sec. King deemed verbal counseling and a three-page ethics guidance letter as appropriate consequences.

The bottom line is that the NAEP is poised to violate federal law by collecting extremely sensitive psychological/socioemotional data on children; to do so in a necessarily subjective manner; to expose the subject children to possible negative consequences in their later schooling and careers, to the extent that even supporters of such assessments are concerned; and to entrust that data to agencies that are no longer governed by serious privacy law and that have proven they cannot or will not keep personal student data secure. For all of these reasons, we believe that any efforts to ask questions concerning mindsets and other socioemotional parameters and to collect that data via the NAEP should be halted immediately.