

Reasons to Support the Student Privacy Protection Act – S. 1341

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The following is a more detailed analysis of why congressional members' support of Senator David Vitter's (R-LA) privacy bill, the Student Privacy Protection Act (SPPA), S. 1341¹ is so important. This bill is the culmination of many discussions and the attentive listening of Senator Vitter with constituents, parents, pro-privacy attorneys and physicians, and others who have spent years fighting the data collection² associated with the Common Core standards and aligned assessments and the mental screening of children. Here is important information that will show that this legislation is a major step forward in improving student data privacy and protecting students' freedom of conscience and freedom from government directed psychological profiling.

SPPA Prohibits Psychological Screening:

One of the most exciting parts of SPPA, especially for analysts and activists like the author, who has been fighting mental screening and the over-diagnosis and drugging of children as young as infancy for more than a decade,³ is the prohibition on psychological testing and the strengthening of the Protection of Pupil Rights Amendment. After defining various terms, the bill does not merely require consent for mental screening and assessment or surveying of psychological attitudes with federal funds (a completely inappropriate federal activity), it fully prohibits psychological screening and profiling. The only exception is for special education evaluations, which is already current law. Significantly, the bill extends the prohibition of psychological screening and profiling to assessments, and thus would also ban the more horrific features of the Common Core assessments.

Here is the key language of SPPA:

“(2) IN GENERAL.—Notwithstanding any other provision of law, no funds provided to the Department or Federal funds provided under any applicable program shall be spent to **support any survey or academic assessment allowing any of the following types of data collection via assessments or any other means, including digitally**⁴ (Emphasis added):

¹ [https://www.congress.gov/bill/114th-congress/senate-bill/1341/text?q={%22search%22%3A\[%22%22s1341%22%22\]}](https://www.congress.gov/bill/114th-congress/senate-bill/1341/text?q={%22search%22%3A[%22%22s1341%22%22]})

² <http://pioneerinstitute.org/download/cogs-in-the-machine-big-data-common-core-and-national-testing/>

³ Dr. Effrem has been opposing invasive, subjective mental health screening from infancy through adolescence for many years by:

- Producing multiple policy analyses, [editorials](#), [briefing sessions](#), [a video presentation](#), research booklet, national and [international conference speeches](#), and [legislative testimonies](#)
- Joining in the work of the [Alliance for Human Research Protection](#), [the Law Project for Psychiatric Rights](#), [EdWatch](#), [Education Liberty Watch](#), and other organizations to expose the connection between the pharmaceutical industry and the development and expansion of government child mental screening programs resulting in over diagnosis of psychiatric disorders and needless and dangerous drugging with psychotropic medication
- Drafting and analyzing legislation in multiple states including [Minnesota](#), [Tennessee](#), [Texas](#), and [Utah](#), as well as the [US Congress](#)
- Serving as an expert witness in a federal lawsuit against a school district that mentally screened a student without parental consent
- Being involved with many groups that provided the medical and policy information and the legal pressure of the above mentioned lawsuit that helped [close down the TeenScreen](#) adolescent mental screening program

⁴ SPPA Section 6 (2)

This language protects a long list of affectively related surveying and testing parameters,⁵ and is much more protective of students in this area than any other legislation, state or federal, introduced anywhere.

SPPA Closes the PPRA Loophole that Allows Psychological Screening in Regular Classroom Curricula and Assessments:

PPRA, which requires parental consent before surveying or evaluating students on eight categories of sensitive information⁶, contains loopholes that render the privacy protections moot in the case of curriculum and assessments:

(4) Exceptions

(A) Educational products or services

Paragraph (1)(E) [the eight areas of sensitive information requiring parental consent for surveys] does not apply to the collection, disclosure, or use of personal information collected from students for the exclusive purpose of developing, evaluating, or providing educational products or services for, or to, students or educational institutions, such as the following:

(iii) Curriculum and instructional materials used by elementary schools and secondary schools.

(iv) Tests and assessments used by elementary schools and secondary schools to provide cognitive, evaluative, diagnostic, clinical, aptitude, or achievement information about students (or to generate other statistically useful data for the purpose of securing such tests and assessments) and the subsequent analysis and public release of the aggregate data from such tests and assessments.
(Emphasis added)

The Vitter language to include assessments in the prohibition on psychological testing and screening was designed specifically to close this gaping loophole. This is also especially relevant because of the very recent news that the National Assessment of Educational Progress plans to assess non-cognitive, social emotional parameters⁷:

⁵ SPPA protects:

“(A) Any data collected via affective computing, including analysis of facial expressions, EEG brain wave patterns, skin conductance, galvanic skin response, heart-rate variability, pulse, blood volume, posture, and eye-tracking”

(B) Any data (including any resulting from national or State assessments) that measure psychological resources, mindsets, learning strategies, effortful control, attributes, dispositions, social skills, attitudes, intrapersonal resources, or any other type of social, emotional, or psychological parameter.

“(C) Any data collected through predictive modeling to be used to detect behaviors, beliefs, or value systems, or for predicting or forecasting student outcomes.

“(D) Any type of psychological data, including assessment of non-cognitive skills or attributes, psychological resources, mindsets, learning strategies, effortful control, attitudes, dispositions, social skills, or other interpersonal or intrapersonal resources collected via any national or State student assessment.

⁶ These are the categories listed in PPRA:

(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.

⁷ <http://www.edweek.org/ew/articles/2015/06/03/nations-report-card-to-gather-data-on.html?cmp=ENL-EU-NEWS2-RM>

The nation's premiere federal testing program is poised to provide a critical window into how students' motivation, mindset, and grit can affect their learning...

...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.

SPPA is also vitally important because of already documented intent of the Common Core standards and aligned assessments to psychologically manipulate and profile students (see these statements from U.S. Department of Education (USED) and other national education organization documents⁸):

- “[A]s new assessment systems are developed to reflect the new standards in English language arts, mathematics, and science, significant attention will need to be given to the design of tasks and situations that call on students to apply a range of 21st century competencies that are relevant to each discipline. *A sustained program of research and development will be required to create assessments that are capable of measuring cognitive, intrapersonal, and interpersonal skills.*” (Emphasis added).⁹
- “There are important opportunities to leverage new and emerging advances in technology (e.g., educational data mining, affective computing, online resources, tools for teachers) to develop unprecedented approaches for a wide range of students.”¹⁰
- “In national policy, there is increasing attention on 21st-century competencies (which encompass a *range of noncognitive factors*, including grit), and persistence *is now part of the Common Core State Standards* for Mathematics.”¹¹ (Emphasis added.)
- “*National model standards often contain elements of social and emotional learning. For example, 42 states and two territories are in the process of adopting the Common Core Standards* in Math and English Language Arts, which contain standards on communication (especially speaking and listening), cooperation skills, and problem solving.”¹² (Emphasis added.)
- “ASCA [American School Counselors Association] *Mindsets & Behaviors* align with specific standards from the Common Core State Standards through connections at the competency level.”¹³ (Emphasis added).
- “There are *many other Common Core Standards that these social and emotional basic skills can be integrated with.*”¹⁴ (Emphasis added.)

⁸ See more details on the psychological manipulation of Common Core at <http://bit.ly/1AEIqkm>

⁹ U.S. Department of Education Office of Technology – Promoting Grit, Tenacity, and Perseverance: Critical Factors for Success in the 21st Century – February 2013 removed from <http://www.ed.gov/edblogs/technology/files/2013/02/OET-Draft-Grit-Report-2-17-13.pdf> but now available at <http://www.flstopccoalition.org/files/F6A22756-73E4-4406-BC0F-F9E8340A37C6--E36F73DA-E434-44F5-B829-1C27BAA8532F/grit-tenacity-and-perseverance-feb-2013-doe.pdf>

¹⁰ Ibid

¹¹ Ibid

¹² Linda Dusenbury - State Learning Standards to Advance Social and Emotional Learning: The CASEL State Scan of Social and Emotional Learning Standards: Preschool through High School – Collaborative for Academic, Social, and Emotional Learning, April 2011 <http://casel.org/wp-content/uploads/2011/04/Brief-on-the-State-Scan-4-18-2011.pdf>

¹³ American School Counselors Association - Change Behaviors by Changing Mindsets - <https://www.schoolcounselor.org/magazine/blogs/november-december-2014/change-behaviors-by-changing-mindsets>

¹⁴ EduThompson Blog - Integrating Social Emotional Curricula and the Common Core – 7/20/13 <http://insidetheclassroomoutsidethebox.wordpress.com/2013/07/07/integrating-social-emotional-curricula-and-the-common-core/>

SPPA Prevents Psychological Profiling of our Students through the IES/NCES Reauthorization (SETRA):

SPPA actually preemptively prohibits social and emotional research on school children to prevent expansion into socioemotional research by the Institute for Education Sciences and The National Center for Education Statistics in S. 227, the Strengthening Research Through Education Act (SETRA) by Senator Lamar Alexander, about which several organizations have warned.¹⁵

Here is the problematic language in SETRA:

"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. . . ."¹⁶ (Emphasis added).

USED is already in flagrant violation of the Tenth Amendment and probably the Fourth Amendment with the amount of data collected and disclosed on individual children, families, and teachers. The Vitter language stops the federal government from researching the thoughts, feelings, attitudes, and behaviors of free American citizens, especially innocent children:

“(4) NO NATIONAL ASSESSMENT USING PSYCHOLOGICAL DATA

.—No funds provided to the Department or to an applicable program may be used to pilot test, field test, implement, administer, or distribute in any way any federally sponsored national assessment collecting any psychological data *or any federally sponsored research on social-emotional data in education*. (Emphasis added).

This bill stops the unacceptable expansion of IES and NCES into the realm of affective research in their SETRA reauthorization.

SPPA Adds Important Protection against 2nd Amendment Data Collection to PPRA:

SPPA contains all of the same important protective elements as the current PPRA statute, and adds “Personal or family gun ownership,” to prevent nosy bureaucrats from snooping into if and how students and their families are exercising their Second Amendment rights.

SPPA Helps Limit the Millions of Data Points on Students, Teachers, and Families Collected by Third Party Vendors:

SPPA changes the term “education records” to “education data.” There are myriad types of data outside of “educational records” that are already being collected without parental consent, especially by third-party vendors. A Politico investigation¹⁷ showed that private corporations have access to up to “ten million” data points on every child and described one company’s efforts:

“Interactive Health Technologies stores multi-year fitness records on students, based on data from heart monitors they wear in P.E., and integrates them with ‘unlimited data points’ from the classroom, including behavioral and nutrition records.”

¹⁵ <http://edlibertywatch.org/2015/02/s227-setra-is-a-federal-data-mining-bill-that-destroys-student-privacy/> and <http://www.americanprinciplesinaction.org/apia-education/conservative-group-urges-congress-to-oppose-social-and-emotional-student-data-collection-bill/>

¹⁶ S 227 Section 132(1)(I) [https://www.congress.gov/bill/114th-congress/senate-bill/227/text?q={%22search%22%3A\[%22%22s227%22%22\]}](https://www.congress.gov/bill/114th-congress/senate-bill/227/text?q={%22search%22%3A[%22%22s227%22%22]})

¹⁷ <http://www.politico.com/story/2014/05/data-mining-your-children-106676.html>

The term “student record” originated in 1974, when the Family Educational Rights and Privacy Act (FERPA) was first written, and when records were on paper and kept in filing cabinets. There were no online/digital data gathering, no cloud computing, and no student longitudinal databases.

The idea for the change in terminology came from testimony by Professor Joel Reidenberg, a law professor and privacy expert from Fordham University Law School (to be distinguished from the decidedly pro-Common Core Thomas B. Fordham Institute), who has been one of the few pro-privacy experts to be allowed to testify in Congress, amongst the corporate skills and bureaucrats who want to grab as much student data as possible. Here is an excerpt from his testimony¹⁸:

Update the definition of “Educational Record”

FERPA covers “educational records” in a very narrow sense and contemplated only those records that were originally kept in central administration files such as transcripts. The statute also specifically carves out an exemption for “directory information” including a student’s name, address, date of birth, telephone number, age, sex, and weight.

The 1974 definition and the directory information exclusion no longer make sense in 2015. Much of the data gathered and used in the context of online services will be outside the scope of the existing definition. For example, metadata gathered from a learning app used by a child in school that was then compiled to create a profile of the child for content delivery would not be an “educational record” and would fall outside the bounds of FERPA. Similarly, information developed by a school’s transportation company identifying the street corners where 6th graders wait to take the school bus would fall outside FERPA and could be disclosed for advertising purposes and even possibly disclosed to non-custodial parents. Likewise, a child’s homework assignment saved or shared with a teacher on a third party service would not be an “educational record” and would not be protected by FERPA.

For meaningful protection of student privacy in this environment, FERPA needs to encompass any information gathered about children for educational and school related uses. This would include profiles, whether or not identified to specific students, if those profiles will have an effect on the child’s education or school related services.

This is a very important update to FERPA.

SPPA Reins in Data Collection by Third Party Contractors:

While there is always more work to do, SPPA goes a long way to rein in third-party contractors and actually imposes financial penalties and allows private lawsuits for data breaches and disclosure of data. In addition, SPPA requires parental consent for ALL personally identifiable information accessed by third-party vendors, including directory information and student ID numbers¹⁹:

“(8) LIMITATIONS ON THIRD PARTY USE.—Notwithstanding paragraph (1) or any other provision of this section (not including paragraph (6)), no funds provided to the Department or under any applicable program may be provided to an educational agency (including a State educational agency) or institution that allows any third party (including any contractor or other person acting under direct control of the agency or institution) to **access student data of students, including personally identifiable information and directory information, unless—**

¹⁸ http://edworkforce.house.gov/uploadedfiles/reidenberg_testimony_final.pdf, see page 4

¹⁹ SPPA Section 3,(8)

“(A) **the agency or institution receives consent from the parents of the student** for the student data to be made available to the third party;

“(B) prior to receiving the consent described in subparagraph (A), the agency or institution provides the parents with notice, not less than 30 days before the records would be provided to such outside party **if consent is obtained, that informs the parent—**

“(i) **of the student data that would be accessed;**

“(ii) **that the student data will only be made available if the parent consents;**

“(iii) that the parent have the ability, under subsection (a), to access the student data of their students held by the agency or institution or outside party, and a description of the process to make corrections for inaccurate data; and

“(iv) that the **agency or institution and the outside party are liable for any violation** of this section and that the remedies described in subsection (k) are available; (Emphasis added)

SPPA Prevents Federal Government Data Cross Matching and Career Tracking:

SPPA requires any data outside the district to be “aggregated, anonymized, and de-identified.” It also prohibits federal data cross matching, longitudinal tracking, and career tracking.²⁰

Look at Who Is Supporting and Opposing SPPA:

Perhaps the best indicator of the value of SPPA is the enemies it has drawn. The Data Quality Campaign, which is heavily funded²¹ by pro-Common Core groups and anti-privacy corporations that stand to profit from access to our children’s sensitive data, has attacked SPPA and lamented that Sen. Vitter’s “intent is to respond to parents’ concerns” (DQC meant this as a criticism!)²². In addition, the American Education Research Association, another group that makes its living on our children’s data, is opposed.²³ AERA’s president said in an email, “This legislation, if it were to pass, would have a devastating impact on the quality of education research.” The federal government and these organizations do not have an automatic right to our children’s sensitive data without at least consent. They should have zero right to psychologically profile our children. The safety and privacy of data, thoughts, and beliefs of our students, teachers, and their families is of far higher importance than the convenience of a bunch of bureaucrats, researchers and corporations

In contrast, several important conservative organizations (such as Home School Legal Defense Association, Eagle Forum, and Concerned Women for America²⁴), in addition to the organizations represented by the author of this paper, are supporting this bill. These have made protecting the privacy rights of children and families a high priority for a long time, even before Common Core and the IES.

One privacy expert (unaffiliated with any of the supportive organizations) said of this legislation, “The Vitter bill is not perfect, but it is the strongest and most authentic educational privacy bill out there.” Please support it.

²⁰ SPPA Section 3 (9) & (10)

²¹ <http://www.dataqualitycampaign.org/who-we-are/funders/>; <http://www.gatesfoundation.org/How-We-Work/Quick-Links/Grants-Database#q/k=data%20quality%20campaign>.

²² http://blogs.edweek.org/edweek/DigitalEducation/2015/05/ferpa_targeted_two_senate_bills.html.

²³ <http://www.appam.org/memo-to-appam-members-senate-student-privacy-bill-threatens-use-of-education-data/>.

²⁴ <http://edlibertywatch.org/2015/05/education-liberty-watch-congratulates-senator-vitter-joins-wave-of-national-support-for-data-privacy-bill/>