



November 3, 2025

Via Electronic Mail: OCR@ed.gov

Frank Miller
Acting Director
Student Privacy Policy Office
U.S. Department of Education
400 Maryland Ave. SW
Washington, D.C. 20202

Re: Request for Investigation Regarding Illinois Violation of the PPRA

Dear Acting Director Miller:

America First Legal Foundation (“AFL”) is a national, nonprofit organization working to promote the rule of law, ensure due process and equal protection for all Americans, and combat invidious discrimination on the basis of race, color, national origin, and sex in America’s schools. We write today on behalf of a group of Illinois parents to report violations of the Protection of Pupil Rights Amendment.

As you surely know, the Department of Education’s Student Privacy Policy Office (“SPPO”) enforces the Protection of Pupil Rights Amendment (“PPRA”), which requires that schools receive affirmative consent from parents before requiring any student to submit to a “survey, analysis, or evaluation” that concerns “mental or psychological problems of the student or the student’s family.” 20 U.S.C. § 1232h(b)(2). The State of Illinois has recently adopted Public Act 104-0032, which requires every school in the state to conduct a mental health screening on all students in grades 3 through 12. This law shifts decision-making authority concerning mental health issues away from parents and places it in the hands of the state, in direct contravention of the law. *See Parham v. J.R.*, 442 U.S. 584, 602 (1979) (“our constitutional system long ago rejected any notion that a child is the mere creature of the State and, on the contrary, asserted that parents generally have the right, coupled with the high duty, to recognize and prepare their children for additional obligations.”) (citation modified).

The problem is compounded by the fact that teachers and school personnel in Illinois are mandatory reporters under 325 ILCS § 5/4. That statute requires all such personnel to inform the Illinois Department of Children and Family Services whenever “they have reasonable cause to believe that a child known to them in their

professional or official capacities may be an abused child.”¹ Under Illinois law, child abuse is broadly defined, including “impairment of physical or emotional health” of a minor.² The Illinois mandatory mental health screening law requires schools to inquire into areas of emotional significance to children, without parental consent, and then to report the results back to the Department of Children and Family Services (“DCFS”) if they receive answers indicating the child’s “emotional health” has been “impair[ed].”³

This raises the specter of serious due process violations once fully implemented. The United States Supreme Court has held that “there is a presumption that fit parents act in the best interests of their children.”⁴ “Accordingly, so long as a parent adequately cares for his or her children (*i.e.*, is fit), there will normally be no reason for the State to inject itself into the private realm of the family to further question the ability of that parent to make the best decisions concerning the rearing of that parent’s children.”⁵ Illinois has created a statutory scheme that excludes parents and seeks information from children that is within the private realm of the family. Worse, the individual collecting the information is likely required to report it to the State’s DCFS. All of this, without parental involvement, is a violation of parents’ fundamental parental rights.

While the new law may provide an opt-out from the otherwise mandatory mental health screenings, that standard falls short of the PPRA’s requirement of affirmative parental consent.⁶ It unlawfully infringes on parental rights, and it undermines the fundamental right of parents to “direct the upbringing and education of children under their control.”⁷

The SPPO’s Authority

The PPRA requires that schools receive parental consent, in writing, before conducting any “survey, analysis, or evaluation that reveals information concerning ... mental or psychological problems of the student or the student’s family.”⁸ This requirement, and all others contained in the PPRA, are enforced by the Secretary of

¹ 325 ILCS § 5/4(a).

² 325 ILCS 5/3.

³ See Public Act 104-0032 (requiring implementation of universal mental health screenings for grade 3 through 12); 325 ILCS 5/4 (identifying people who are required to report to the Department of Children and Family Services information about potential child abuse).

⁴ *Troxel v. Granville*, 530 U.S. 57, 68 (2000) (citing *Parham*, 442 U.S. at 602).

⁵ *Id.* at 68-69.

⁶ 20 U.S. Code § 1232h (requiring parental consent, not simply an opt-out option).

⁷ See *Pierce v. Society of the Sisters of the Holy Names of Jesus and Mary*, 268 U.S. 510, 534-35 (U.S. 1925).

⁸ 20 U.S.C. § 1232h(b).

Education (20 U.S.C. § 1232h(e)), who has delegated investigatory authority to the Director of the SSPO.⁹

To clarify any confusion and educate schools about the law, the SPPO recently issued a “Dear Colleague Letter” providing guidance regarding parental rights under the Family Educational Rights and Privacy Act and the PPRA and making clear that compliance with these statutes is a non-negotiable condition of continued federal funding.¹⁰ Every State and Local Education Agency (as those terms are defined by statute) was required to certify its compliance with these requirements by April 30, 2025, or face termination of their funding.¹¹ Under the relevant regulations, any “student or a parent or guardian of a student directly affected” may file a complaint with the SSPO, which is then tasked with investigating and deciding whether the violation occurred.¹²

After an investigation by the SSPO, enforcement is left to the discretion of the Secretary of Education if the recipient fails to come into compliance with the PPRA voluntarily.¹³ Sanctions for such failure include the termination or withholding of federal funds.¹⁴

Because the Illinois Department of Education receives federal funding, it is a State Education Agency subject to the requirements of the PPRA and the jurisdiction of the United States Department of Education.

Illinois’ New Universal Mental Health Screening Law

Illinois recently adopted Public Act 104-0032, which amends the Illinois School Code and requires schools to phase in universal mental health screenings to all students in grades 3 through 12 at least once a year, beginning with the 2027-2028 school year. The law applies to all students in Illinois public schools and allows screenings without the written parental consent required under the PPRA.¹⁵ At the same time, the law directs the Illinois State Board of Education to work with the Governor’s office to “make available ... model procedures and guidance informed by a phased approach to implementing universal mental health screening in schools. These model school district procedures ... shall include, but are not limited to, **the option to opt-out.**”¹⁶

⁹ 34 C.F.R. § 98.9.

¹⁰ Letter from Frank Miller, Acting Director SPPO, to Chief State School Officers and Superintendents (Mar. 28, 2025), available at <https://perma.cc/C8ZP-9QSC>.

¹¹ 20 U.S. Code § 1401(32).

¹² 34 C.F.R. § 98.10(a)(1).

¹³ *Id.*

¹⁴ *Id.*

¹⁵ Compare Public Act 104-0032 with 20 U.S.C. 1232h(b).

¹⁶ Public Act 104-0032, Sec. 2-3.203(c).

Opt-outs, however, are insufficient under the PPRA, which requires written parental consent, unless an exemption applies.

The PPRA includes a provision entitled “State Law Exception,” but it does not apply to Illinois’ universal mental health screenings.¹⁷ That clause only exempts programs conducted under state laws that affirmatively require parental notification, which Public Act 104-0032 does not. Public Act 104-0032 requires the Illinois Department of Education to draft model procedures and guidance that include the option to opt out of the screenings, but the law stops short of requiring school districts to adopt those model procedures requiring opt-outs or even parental notifications. Therefore, the State Law Exception does not apply, and the PPRA’s parental consent requirements are enforceable against the Illinois Department of Education and any school acting under Public Act 104-0032.

Request for Investigation

Accordingly, we ask that SPPO promptly open an investigation into the allegations in this complaint, take all actions necessary to remedy the unlawful practices and procedures, and order all appropriate relief.

Thank you for your attention to this crucial matter, and do not hesitate to contact us for further information.

Sincerely,

/s/ Nicholas R. Barry

Senior Counsel

America First Legal Foundation

¹⁷ 20 U.S.C. 1232h(e)(4)(B)(i).