INFORMATIONAL LETTER

TO: Superintendents and Elementary and Secondary Principals
FROM: H. Sawin Millett, Jr., Commissioner
RE: Review of new federal legislation Protection of Pupil Rights - Hatch Amendment

Recently enacted federal legislation entitled The Education Amendment of 1978 (PL 95-561) which was signed into law by President Carter on November 12, 1978, contains a significant new amendment to Section 439 of the General Provisions Act of 1974 and is identified as "Protection of Pupil Rights". The new legislation is now being referred to as the Hatch Amendment, named after Congressman Orrin Hatch, Senator from Utah and sponsor of the legislation.

The purpose of this informational letter is to outline the text of the legislation and to suggest recommendations for school administrators to consider regarding the law.

The text of the original 1974 legislation is as follows:

Section 439. All instructional material, including teacher's manuals, films, tapes, or other supplementary instructional material which will be used in connection with any research or experimentation program or project shall be available for inspection by the parents or guardians of the children engaged in such program or project. For the purpose of this section "research or experimentation program or project" means any program or project in any applicable program designed to explore or develop new or unproven teaching methods or techniques.

(General Education Provisions Act, Enacted August 21, 1974).

The text of the 1978 legislation (Hatch Amendment) is as follows:

Protection of Pupil Rights

Section 1250. Section 439 of the General Education Provisions Act 20 USC 1232h (relating to protection of pupil rights) is amended by inserting "(a)" after "439" and by adding at the end thereof a new subsection as follows: "(b) No student shall be required, as part of any applicable program, to submit to psychiatric examination, testing, or treatment, or psychological examination, testing, or treatment in which the primary purpose is to reveal information concerning:

"(1) political affiliations;
"(2) mental and psychological problems potentially embarrassing to the student or his family;
"(3) sex behavior and attitudes;
(4) illegal, anti-social, self-incriminating and demeaning behavior;
(5) critical appraisals of other individuals with whom respondents have close family relationships;
(6) legally recognized privileged and analogous relationships, such as those of lawyers, physicians, and ministers; or
(7) 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 unemancipated minor, without the prior written consent of the parent."


This department has recently been informed by the U.S. Office of Education that federal regulations are presently being developed on the Hatch Amendment with an expected completion date of late March, 1979. Once this department has received and reviewed the regulations, they will then be disseminated to administrators.

Until the federal regulations become available and during this interim period, I believe it important to suggest some general recommendations for administrators to use. The following recommendations are offered for your consideration and should be viewed as precautionary steps to pursue at this time.

1. The text of the Hatch Amendment specifically cites psychiatric and psychological examination, testing, and treatment.

Recommendations:
(a) Federally supported educational programs and activities, involving the broad area of moral education and including such areas as sex education, family planning, values and values clarification, behavior modification, attitudinal development, and other allied areas should be examined regarding their coverage in the contents of the law and students should not be required to submit to examination, testing, and treatment in these areas.
(b) A review of data-collection instruments such as tests, questionnaires, inventories, interview schedules or guides, rating scales, and survey plans or any other forms which are used to collect student data in federally supported educational activities and programs should be examined regarding coverage in the contents of the law and students should be required to submit to examination, testing, and treatment in these activities.
(c) Prior written consent of the parent applies only to item 7, income.

2. Regular academic/scholastic testing in such areas as achievement, aptitude, and intelligence is not listed in the new legislation categories, thus, regular practices of group or grade testing could continue in the manner which has been adopted by the local education agency.

3. Testing practices and procedures used in the evaluation process for handicapped and special education should continue to be based on this department's regulations and in the manner which has been adopted by the local education agency. It should be noted that recommendation #3 is applicable to all students.

Inquiries concerning the Protection of Pupil Rights - Hatch Amendment should be referred to Betty McLaughlin at 289-2033.

HSM:ss