Parental consent/opt-out rights under the PPRA - Important Update on U.S. Department of Education Interpretation:

(November 2026)

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In brief, the Department's new interpretation provides that active (prior written) parental consent will be deemed required for *any* protected information survey under the PPRA:

> "***Before administering a survey, evaluation, or analysis that solicits information relating to the eight protected categories listed in PPRA, a school must provide parents an opportunity to inspect and review the survey and provide written consent before their minor child participates in the survey***" and "***the opt-out provisions in PPRA do not apply as a way of securing parental consent for student participation in such a survey***."[2]

Furthermore, it specifically references mental health screenings, providing that whenever LEAs use such screeners, "they must ensure that written parental consent is obtained prior to administration."[3]

HB 355 directs the School Health Services Committee to make recommendations on best practices for annual mental health screenings for public school students in grades six through 12, specifically including best practices relating to "procedures for parents to opt their children out of such screenings." In light of the federal Department of Education's new interpretation of the parental consent/opt-out provisions, recommendations on best practices for parental opt-out procedures merits additional consideration. In doing so, the following best practices may be considered:[4]

(1) If possible, adopt procedures requiring active consent—prior, written parental consent—from the parent of each student in order for such student to participate in mental health screening for the foreseeable future.

- While the federal law with respect to parental opt-out procedures is still in force, given the Department's updated interpretation and potential uncertainty surrounding how that interacts with the opt-out provisions of the PPRA, it may be prudent for school boards to avoid relying solely on opt-out procedures for mental health screenings for the foreseeable future to avoid risk of federal compliance investigations and potential loss of federal funds.

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(2) If a school board still elects to use opt-out procedures, rather than requiring prior written parental consent, best practices recommend:

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- Formally adopt, in consultation with parents, a written passive consent policy consistent with all applicable federal and state law and regulation, and ensure:
    - (i) Parents/guardians are promptly notified about any changes to such policy;
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        - (ii) Given a reasonable opportunity to review the survey and to decline their child's participation (opt out).
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(1) If possible, adopt procedures requiring active consent—prior, written parental consent—from the parent of each student in order for such student to participate in mental health screening for the foreseeable future.

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    - (i) Parents/guardians are promptly notified about any changes to such policy;
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