

Observing the Birth of the Hatch Amendment Regulations: Lessons for the Education Profession

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It's too late for educators to significantly alter the Hatch Amendment, but we can be ready for the *next* time by learning to handle antagonistic pressure groups, activating our own professional organizations, and improving our public relations.

When a child in your school district is selected to participate in an experimental group or program, do parents have the opportunity to preview the methods and materials to which their children will be exposed? Are parents aware of a teacher's intent to employ affective teaching techniques or methods such as values clarification, psychodrama, or moral development exercises? If your district adopts an exemplary curriculum program funded by the U.S. Department of Education and disseminated through the National Diffusion Network, are parents notified and encouraged to examine the program prior to its use in the classroom?

If you answered "no" to any of these questions, your school district is probably violating the spirit, if not the letter, of the law. This law is the Hatch Amendment, passed so quietly by Congress in 1978 that few people in our profession knew about it. Today, not many more educators are aware of its implications. If this alarms you, it should. Few of us were paying attention while the drama of the passage of regulations for the Hatch Amendment was being played out. Almost without

dissent from the profession, the regulations were passed. Now, we are on the verge of trying to revise them. How did we get ourselves into this situation? What is the Hatch Amendment all about?

The Hatch Amendment

The story begins with a review of Section 439 of the General Provisions Act of 1974, which required education grant recipients or contractors involved in most programs administered through the Department of Education to comply with the following provision.

All instructional material, including teachers' 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.¹

In 1978, the Hatch Amendment, in the form of a new subsection (b)

to Section 439, added another key element: the belief that youngsters were being forced to submit to psychiatric and/or psychological examination, testing, or treatment in some public school classrooms. Specifically, the Hatch Amendment states:

No students 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 one or more of the following:

1. political affiliation;
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;
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 consent of the student (if the student is an adult or an emancipated minor) or in the case of an unemancipated minor without the consent of the parent.²



The Hatch Amendment Regulations

Under Hatch Amendment provisions, elementary and secondary school officials who implement Department of Education programs or projects must obtain written consent from the parent or guardian of an unemancipated minor before the student can be subjected to psychiatric, psychological, or behavioral questioning or testing in connection with any curriculum, program, or activity. However, from the day the Hatch Amendment was passed, the written consent requirement lay dormant, that is, until 1984. As Charlotte Iserbyt, an education activist and

former Department of Education employee, observed in a memorandum to her conservative allies dated 10 January 1984:

The only tool available to us to protect our children in the government schools is a federal law, the Hatch Protection of Pupil Rights Amendment, passed unanimously by the U.S. Senate in 1978, for which the Office of Education promised regulations in early 1979. I know that many of you, for good reason, feel that the Hatch Amendment has been useless. Of course, it has been useless. Any statute which has no mechanism for enforcement is nothing more than a scrap of paper....⁴

Iserbyt then turned her attention to

the reason why regulations have not been promulgated:

Although excellent regulations were drafted in 1982 by conservatives in the Office of the General Counsel (who have been subsequently fired by Secretary Bell), they have not seen the light of day since Bell doesn't like them and he also does not want to offend his educationist friends by signing off on regulations that will disturb their *modus operandi*, their persistent efforts to change the values, attitudes and beliefs of students to conform with those necessary to bring about a socialist/humanist one world government.⁴

As Iserbyt clearly saw, it is through regulations that responsibilities become clarified, procedures for grievance and redress established, and penalties for noncompliance stated. Therefore, the importance of regulations cannot be overstated. •

An impending change in Hatch Amendment status was about to occur. On 22 February 1984, a notice of proposed rulemaking appeared in the *Federal Register* to establish procedures for handling inquiries and complaints under Section 439 as amplified by the Hatch Amendment. Under the proposed procedures, the Secretary of Education would designate an office within the department to investigate and review complaints of violations of Section 439. If, after review and notification of noncompliance, an award recipient continued in noncompliance, the secretary would be authorized to withhold funds from the recipient or even to terminate the award. Finally, two methods were announced for persons who desired to comment on a preliminary draft of the proposed regulations. First, they could submit comments by mail. Second, they could speak at hearings on the proposed regulations, which were scheduled from 13-27 March 1984, in seven locations across the country. All comments were to be received by 22 May 1984.

Interestingly, Iserbyt had notification of the proposed regulations prior to 10 January as evidenced by an *Urgent Alert* she sent to her "Education Group Leader Activists," in which she urged them to "request to be placed on the list of persons scheduled to testify the *morning* (to make sure you get to speak) of the hearing." Her guidance to the activists included suggestions related to the scope of the soon-to-be-published regulations. She argued:

"Under Hatch Amendment provisions, elementary and secondary school officials who implement Department of Education programs or projects must obtain written consent from the parent or guardian of an unemancipated minor before the student can be subjected to questioning or testing of a psychiatric, psychological, or behavioral probing nature in connection with any curriculum, program, or activity."



The *intent* of Congress was to cover *all* the mindbending techniques and materials used in our children's classrooms, in special ed[ucation] and in guidance, not just the narrow and difficult to define areas of psychological and psychiatric testing or treatment.⁵

She provided a set of quotable commentaries for her contacts as they prepared oral or written testimony. Finally, she warned:

You can expect to be up against lobbyists from all the special interest groups and educational associations (there are over 900 of them in the country). They and Bell detest the Hatch Amendment *and* are responsible for us never getting regulations.⁶

Oral Testimony: The Seven Hearings

Oral testimony was taken for an entire business day at each of the seven hearings. We have examined the transcripts from these hearings. Although Iserbyt was concerned that persons or organizations opposed to the proposed regulations would testify, that did not occur. Amazingly, of the 163 persons from 29 states who testified at the seven hearings, all but two urged passage of the regulations. It is impossible to overstate the anger, distrust, and loathing that the witnesses expressed about what they believed was the nature of education in the nation's public schools.

Three major themes ran throughout the testimony:

1. *They are invading our privacy and brainwashing our children.* Case studies of public school teachers who probe into children's personal and family attitudes and practices pervaded the testimony. Witness after witness described personal experiences involving teachers who manipulated children into revealing information that would be prohibited if the Hatch Amendment were enforced. By far, the greatest number of critical observations involved cases the critics referred to as "brainwashing." If there was one focus for this charge of brainwashing, it was the use of "values clarification" strategies. One witness testified:

When my daughter was 12 years old, she was given a questionnaire by her 7th grade health teacher without my knowledge or consent. She was asked many personal questions including her views about life after death. She was asked: "What reasons would motivate you to commit suicide? ..."



She was given a list of ten ways of dying and asked to list them in order of most to least preferred."

Hundreds of thousands of youngsters across this nation are being coerced into discussing matters of private morality and family life each day in the classroom through manipulative methods such as values clarification. ..."

A former teacher testified:

Another example of interfering with family values is a process called "magic circles." Students are asked to sit in a circle and discuss their feelings. Its purpose is to develop the whole child which sounds good. ... Students are encouraged to discuss their personal feelings. They are often probed into sharing more about themselves, their problems and their families, and they feel uncomfortable. If that happens to us it makes us feel embarrassed.

However, youngsters of this age are stripped of their defenses ... to have the values that parents have spent years developing stripped away is one of the greatest violations of our personal freedoms.⁹

Some people who testified argued that the techniques being used in our schools can be likened to those used in Russia, Red China, and Nazi Germany. Many of these people believe that educators have conspired to brainwash the youth of America.

2. *Public school students are being deprived of academics.* An often-repeated theme in the testimony is that public school children are falling behind children in private schools as well as those in other countries in

academic learning because of the time devoted to "mindbending" programs. Witnesses argued:

Educators have squeezed essential skill learning out of the school day in order to have more time for personality development, attitudinal adjustment, and discussions about social issues.¹⁰

Furthermore, witnesses at the hearings were convinced that this phenomenon of substituting "nonacademics" for "academics" was the result of a conscious conspiracy by leaders of the "educational establishment," which consists of behavioral psychologists and education college professors allied with NEA, who communicate with one another through professional organizations and other journals. One witness commented:

... remember, goals today of many top educators, behaviorists and innovators are that education is no longer to convey knowledge. No longer must we ladle out the facts, say some. The idea is to take children at a young age and program their attitudes, values, and behavior until they meet criteria established by the behaviorists.¹¹

This argument has timely appeal. The recent spate of reports emanating from Washington, education-minded philanthropic foundations, and professional education organizations has identified academic deficiencies in U.S. schools as a critical need to be addressed. Not surprisingly, several witnesses used evidence of vanishing academics to buttress the argument in favor of the regulations.

3. *Return the public schools to local control.* Many of those who testified were opposed to any federal role in education. Ironically, these same people are working, perhaps unknowingly, to involve the federal government more heavily in education. One witness argued:

We don't believe that the federal government should have a role in education other than seeing that local education systems do not create treasonous situations which might be a threat to the security of our nation or violate our United States Constitution.¹²

Another witness asserted that the NEA manipulated Congress into creating the U.S. Department of Education to hasten the day when educational control of local schools was in the hands of the "Washington-based" NEA leadership. In fact, there is a curious, oft-repeated reference to public

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schools as "government schools," suggesting that some critics believe that the public schools already have been effectively removed from any local control or influence.

The scenario of heavy-handed federal involvement in educational decision making at the district level begins with the assumption that the Hatch Enforcement Office in the Department of Education is open for business and is staffed by persons sympathetic to the agenda of the conservative critics. Would a local school board support a teacher who used provocative or controversial materials in the schools if it resulted in a dispute with organized parents and embroiled the school system in a brouhaha with a federal government office? Probably not! Moreover, added pressure would be placed on local school boards to prevent any of the "mindbending" activities from being implemented in the schools, the principle being that if such activities are judged harmful by federal law, they should be banned entirely in the schools. Given that the sweeping interpretation of such activities as defined in the Hatch Amendment would prohibit innocuous practices such as "sharing" by primary school children of "prized possessions" or "things I do well," one can conclude that the local curriculum might be purged of all affective content and methodology.

If this control of the curriculum by organized pressure groups sounds far-fetched, then remember that the conservative critics believe that they are simply responding to the "conspiracy" by "educationists" to destroy the schools from within. Their list of ene-

mies reads like a "Who's Who/What's What in Education" over the last 25 years:

Someone is tampering with the soul of America. It is not undirected. . . . It has operated on intellectual deceit, clothing itself in phrases which have been designed to give the appearance of progress. It goes by many names. It calls itself sensitivity training, change agents, learning clinics, psychoeducational clinics, psychosocial treatment, psychotherapy, sociometry, role playing, attitudinal surveys, diaries, journals, psychodrama, encounter groups, simulation or survival games, group dynamics, open classrooms, inquiry learning, values clarification, more honestly called values mutilation, moral education, awareness training, consciousness raising or awareness, transcendental meditation, ungraded education, middle schools, magnet schools, character education, contemporary literature, death education, abortion and contraception education, sex education, psychology, parapsychology, astrology, mythology, classes about religion, inservice training, family living, character citizenship, alternative schools such as the Scarsdale School which sends our children to China, globalism, interdependence, health education, drug education, mastery learning, super learning, new math, ecology and environmental education, parenting, child development, behavior modification, magic circle, Kohlberg's moral reasoning, esparanto metrics, operant conditioning, look-say methods, management by objective, accountability, minimum competencies, taxonomy, multicultural education, multidisciplinary and interdisciplinary approaches, gifted education, and so on and on and on.¹³

Examination of Written Testimony

During the 90-day designated comment period (22 February to 22 May 1984) the Department of Education reported receiving 1,895 written comments concerning the proposed regulations. Of the total, 1,625 favored the regulations and 270 opposed them. Our follow-up check verified the accuracy of the tabulations; however, an analysis of the comments yielded some surprising results. First, if one examines the comments in groups of 100 packaged by the dates received, an important fact emerges. In the group of 100 received first, comments opposed to the regulations outnumbered those in favor of them. At 400, the pro and con letters were in a dead heat. At 600, the comments supporting the regulations began to pull ahead, 350 to 250. From comment 600 to 1,895, there was almost unanimous support

for the regulations. An obvious conclusion is that organized forces promoted a comment-writing campaign.

It is fair to say that educational policy was being determined by the numerical weight of those who favored or opposed the regulations. Each communication was accorded the same numerical status without regard to whether it came from an individual or an organization. The comments that favored the regulations were written almost exclusively by individuals, while communications opposing the regulations were often written by persons representing organizations. Finally, each comment was given equal weight by the Department of Education officials who analyzed them, without regard to whether the comment was a formula letter or postcard or a thoughtful, reasoned, researched examination of the advantages and disadvantages of the proposed regulations. In addition, a content analysis of the comments established that among the 1,625 comments favoring the regulations there were fewer than 30 *unique communications*. The others were verbatim recordings of a formula message. One particular format resulted in hundreds of postcards addressed not to the Department of Education office designated in the "Requests for Comments" but to President Reagan.

Dear President Reagan:

I am in agreement that effective regulations for the Hatch Amendment should be written and circulated throughout the U.S. to all school systems.

Unfinished Business

Perhaps the passage of the Hatch regulations has awakened educators to the fact that we have a lot of work to do. After following this story for quite some time, after reading all of the testimony given at the seven hearings, and after examining all of the written testimony, we noted the following items of unfinished business.

1. *We need regulations with more appropriate definitions and scope.* Although the regulations have already been issued and some definitions stated, educators may still have an opportunity to affect the final disposition of the definitions. Of particular concern, and of greatest potential significance, was the definition of "psychiatric or psychological examination or test" to mean:

"A potentially major educational change has occurred, and the education profession failed to block it."

A method of obtaining information, including a group activity, that is not directly related to academic instruction and that is designed to elicit information about attitudes, habits, traits, opinions, beliefs, or feelings.¹⁴

And the definition of "psychiatric or psychological treatment" as:

An activity involving the planned, systematic use of methods or techniques that are not directly related to academic instruction and that is designed to affect behavioral, emotional, or attitudinal characteristics of an individual or group.¹⁵

Changes are also needed to clarify the meaning of the words "new," "innovative," and "experimental." Implied in that clarification is the concern that there be a reasonable time limit beyond which a program cannot be labeled as experimental. At the hearings, witnesses were calling a program experimental even after it had been in existence for 20 years.

In addition, it will be necessary to determine how broadly the Hatch Amendment will be applied. The law applies to "instructional material which will be used in connection with any research or experimentation program or project." Yet there are those who would like to see the Amendment applied more broadly. One witness argued:

Under this amendment all curricula developed with federal funds, no matter how old the program might be, should be covered by the Hatch Amendment even if the program is no longer receiving federal funds.¹⁶

Another person went so far as to say:

This Hatch Amendment should apply to all federally funded programs, even if the program is no longer receiving funds. If

ten cents of federal money went into the development in 1965 and the program is presently in schools, but not receiving federal funds, it still must be covered by Hatch.¹⁷

Finally, Monika Harrison, a Department of Education official who presided at a number of the hearings and who has been placed in charge of the office to which complaints are forwarded, said in a newspaper article, "If there continue to be major questions about the utility or the effect of a method or program, you would probably have a claim that it was unproven."¹⁸

There is a legitimate fear that the Department of Education ultimately will interpret Hatch broadly. Certainly, there are individuals in the department who support a broad interpretation. Consider the remarks of Gary Bauer, the Department of Education's Deputy Undersecretary for Planning, Budget, and Evaluation. On the Christian public affairs radio program, "Contact America," Bauer is reported to have said that the Department is looking "at every way it can to make sure that the Hatch Amendment affects everything." He pledged his support to see that all programs administered in the department will be covered to the fullest extent possible. He also expressed concern that a loophole in the phrasing of the amendment may permit programs in other agencies, such as the National Endowment for the Arts and the National Endowment for the Humanities, to avoid the enforcement regulations.¹⁹

In his first news conference as Secretary of Education, William J. Bennett expressed support for parents who press the schools for an inspection of instructional materials by saying:

If I were a parent with a child in school I would take a very close look at what my son was being asked to study, because there are a lot of things in schools, that in my judgment, don't belong there.²⁰

2. *We need to clarify the appeal process.* The final regulations to enforce Hatch, published in the *Federal Register* on 6 September 1984, provide that a person who has a complaint is required only to provide "evidence of an initial attempt at resolution with local and state officials (where there is a state process) and to provide the name of local and/or state officials contacted, as well as significant dates

in the attempted resolution process¹¹ prior to contacting the enforcement office in the Department of Education.

It is interesting to observe that at the meeting of the Hatch Amendment Coalition (made up of representatives of educational associations) and the conservative group there was agreement on the need for written evidence of attempted resolution of the complaint—for exhausting the local and state procedures before taking the complaint to the federal government. This could be a most valuable agreement because it provides a role for the state educational agency in the process.

3. *We need to listen to our critics.* As educators, we must listen to what these witnesses are saying about us. In some instances, parents who wished to complain about something to school officials felt they were made to "dance the bureaucratic trot." They claimed that they were asked to complete a special form, were told lies, and were admonished, demeaned, delayed, and even insulted:

Informed and reactive parents are looked upon as irrational and uncontrolled. This feeling of helplessness is furthered by the actions of civil servants humoring them as over-reactive and unlearned. When the concerned parent tried to acquire help, he is then faced with a multitude of regulatory terminology designed and worded as to render clear and plain language ineffective.¹²

Lessons to Be Learned

It is too late for educators to do much about the Hatch Amendment. The new regulations have been drafted and published, and, with the exception of the definitions, it is unlikely that we can alter them significantly. A potentially major educational change has occurred, and the education profession failed to block it. Consequently, there are lessons to be learned if we wish to avoid a repetition of Hatch in the future.

1. *We must learn to handle antagonistic pressure groups.* Pressure groups are not new to educators, but we have taken them too lightly and have not learned to marshal arguments and forces to combat them. What has been accomplished through the passage of these regulations may have far-reaching impact on our schools. Although it remains to be seen exactly what that impact will be, we can be certain that this victory will

lead to more conservative pressure on schools and school people.

2. *We must activate our professional groups.* We are often amazed to learn of organized efforts to get something passed, and the Hatch Amendment story was no exception. It is somewhat disconcerting to learn that there was opportunity to comment on the regulations before they were passed. Neither we, nor colleagues with whom we have spoken, can remember receiving notice from our professional organizations about this issue. Furthermore, the leaders in our organizations wrote their comments in the name of the membership rather than mobilizing a mass letter-writing campaign. Perhaps they were unaware that each letter was to be counted. If this number-counting game is a sign of the times in federal education policy making, then we must be better organized.

3. *We need better public relations.* We have not done very well in justifying to the community our views on education beyond "the basics." Those of us who are committed to the social and personal purposes of education have failed to convince the public that these purposes are legitimate, yes, even noble. Worse yet, too many of us have attempted to hide what we are doing in school and have discouraged parents from learning the truth. Alas, we also must admit that there is some truth to what we read over and over again in the hearing testimony. Our poorest teachers, when held up as examples, reflect on the entire profession. However, it is not necessarily the "poor" or "weak" teacher in terms of the narrow meaning of professional competence who hurts us, but rather the politically naive, mindless, or dogmatic teacher who invades the private world of the student and the family with no educationally defensible justification for doing so.

The adoption of the Hatch Amendment regulations sounds almost like a conspiracy, yet even now there are few educators aware of what has happened during the past year. Six years after passage of the Hatch Amendment, regulations were passed to implement it. Further, a conservative group was very effective in lobbying for passage, while educators and their professional organizations were ineffective. There is much to learn from these events. This may be the beginning of more direct federal control of education. Our col-

lective task is to alert the profession about what has happened and the potential threat to local control of schools. Finally, the lessons of the Hatch fight must teach educators and their organizations to manage their substantial forces more effectively. The day will surely come when conservative critics choose another avenue of attack against public schools and the educators who work in and support them. When this happens, we must be ready.□

¹¹*The General Education Provisions Act*, 20 USC 1232h, Sec. 439.

¹²*The General Education Provisions Act*, 20 USC 1232h, Sec. 439, subsection (b).

¹³Charlotte Iserbyt, Memorandum on Upcoming Hearings for Hatch Regulations, 10 January 1984, p. 1.

¹⁴*Ibid.*, p. 1.

¹⁵*Ibid.*, p. 4.

¹⁶*Ibid.*

¹⁷United States Department of Education, public hearing on Proposed Rulemaking Implementing the Hatch Amendment, Orlando, Fla., 23 March 1984, p. 149.

¹⁸*Ibid.*, p. 150.

¹⁹*Ibid.*, p. 161.

²⁰United States Department of Education, public hearing on Proposed Rulemaking Implementing the Hatch Amendment, Washington, D.C., 27 March 1984, p. 12.

²¹United States Department of Education, public hearing on Proposed Rulemaking Implementing the Hatch Amendment, Orlando, Fla., 23 March 1984, p. 20.

²²*Ibid.*, p. 64.

²³*Ibid.*, pp. 23-24.

²⁴*Federal Register* 49, 174 (Thursday, 6 September 1984), 34 CFR Parts 75, 76, and 98, "Final Rules with Invitation to Comment."

²⁵*Ibid.*

²⁶United States Department of Education, public hearing on Proposed Rulemaking Implementing the Hatch Amendment, Pittsburgh, Pa., 16 March 1984, p. 60.

²⁷*Ibid.*, p. 101.

²⁸Material available to the authors.

²⁹*Department of Education Weekly* 5, 42, (1 October 1984). Also reported in *Teacher Education Reports*, 27 September 1984.

³⁰*Education Week* IV, 22, (20 February 1985).

³¹United States Department of Education, public hearing on Proposed Rulemaking Implementing the Hatch Amendment, Orlando, Fla., 23 March 1984, p. 168.

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