

October 4, 2013

Clinics Release New Report:

***Best Practices for ASVAB-CEP Administration: A Guide to Professional
Guidance Counselors***

Each year, the U.S. military administers an aptitude test to over 600,000 children in roughly 14,000 different high schools across the country through a program known as the Armed Services Vocational Aptitude Battery – Career Exploration Program (“ASVAB-CEP”). While some schools use the ASVAB-CEP to provide career guidance, the U.S. military also uses the test to gather personal information on students for recruitment purposes.

Guidance counselors who steer students toward taking the exam may not be aware that there are family and student privacy issues that should be taken into account before any student sits for the exam. To inform school staff and education policymakers about these issues, the Constitutional Rights and International Human Rights Clinics, at Rutgers School of Law | Newark, has published ***Best Practices for ASVAB-CEP Administration: A Guide for Professional School Counselors***. The document outlines steps that should be taken by schools to ensure that legal requirements and professional standards are respected when the ASVAB-CEP is administered:

- Informing both students and their parents (or guardians) about the purposes of the ASVAB-CEP;
- Making sure students and their parents (or guardians) know that student participation in the ASVAB-CEP is voluntary;
- Obtaining informed consent from both students and their parents (or guardians) as a prerequisite to student participation in the ASVAB-CEP; and,
- Ensuring that schools select “Option 8,” so that test results will not be released to military recruiters without students’ and their families’ consent.

We hope you find this document informative, useful, and timely, especially in light of recent events that have heightened the public’s awareness of the need to protect their constitutional privacy rights. For more information on this and other topics in the ***Best Practices Series***, contact Penny Venetis, Clinical Professor of Law, and Director of the International Human Rights Clinic, at (973) 353-5687, or visit:

(Constitutional Rights Clinic) <http://law.newark.rutgers.edu/clinics/constitutional-litigation-clinic>

(International Human Rights Clinic) <http://law.newark.rutgers.edu/international-human-rights-clinic>

Best Practices for ASVAB-CEP Administration

A Guide for Professional School Counselors

Fall 2013

Of the many roles you will play in the lives of students, career planning is one of the most important. The American School Counselor Association (ASCA) strongly encourages counselors to collaborate with “administrators, teachers, staff, families and the community to ensure all students have the opportunity to design a rigorous and relevant academic and career program.”¹ One way to guide students in exploring career possibilities is through aptitude and career assessment testing.

Many private service providers offer testing options for a small fee. Indeed, there are many options to choose from, such as ACT’s Interest Inventory. For a list of other available testing options, see Table 1.

The U.S. Military Entrance Processing Command also provides the Armed Services Vocational Aptitude Battery Career Exploration Program (ASVAB-CEP) to high school students at no cost.

In choosing the appropriate assessment measure for your school, be aware, however, that private and military assessments are not interchangeable. Most private testing options safeguard student test results and do not release their scores to third parties without informed consent. This is consistent with the ethical obligations of school counselors, as well as the privacy and legal rights of students and their parents or guardians.

In contrast, if you administer the ASVAB-CEP without careful consideration, you might inadvertently release students’ test results to military recruiters, in violation of students’ and parents’ privacy rights.² To make sure this does not happen, this report summarizes best practices related to the selection and administration of aptitude tests with an emphasis on the ASVAB-CEP.

Table 1. Sample List of Available Career Planning and Assessment Measures*

ACT’s Interest Inventory
Ball Aptitude Battery
Campbell Interest and Skill Survey (CISS)
Career Ability Placement Survey (CAPS)
Career Attitudes and Strategies Inventory
Career Decision-Making System (CDM)
Career Thoughts Inventory (CTI)
Kuder Career Planning System
Occupational Interests Planning Kit
Strong Interest Inventory
Vocational Preference Inventory

* These are not recommendations. This is only a sample list of available options. Be sure to research the validity and effectiveness of each testing instrument before choosing one. See ASCA’s Ethical Standards for School Counselors § A.9. Evaluation, Assessment and Interpretation. For more information on available career assessing testing measures, check the resources of the Association for Assessment and Research (theaaceonline.com) and Florida State University’s Center for the Study of Technology in Counseling and Career Development (career.fsu.edu).

PROFESSIONAL OBLIGATIONS

In administering aptitude tests, counselors must protect confidential student information. Under section A.2.c. of ASCA's Ethical Standards for School Counselors, counselors must "keep information confidential unless legal requirements demand that confidential information be revealed or a breach is required to prevent serious and foreseeable harm to the student."³ More specifically, counselors are strongly encouraged to "consider confidentiality issues when utilizing evaluative or assessment instruments and electronically based programs."⁴ Furthermore, counselors should "monitor the use of assessment results and interpretations, and take reasonable steps to prevent others from misusing the information."⁵

Collectively, these guidelines demonstrate the importance of student privacy. It is imperative that counselors fully understand these issues prior to administering aptitude tests, particularly the ASVAB-CEP. Administering the ASVAB-CEP without taking measures to protect student privacy violates these ethical guidelines and may compromise a family's legal rights.

UNDERSTANDING THE ASVAB-CEP

The ASVAB-CEP can provide: (1) students with a tool for career exploration, and (2) military recruiters with a source of qualified leads for military recruitment.⁶ Your office has the authority to determine which function the ASVAB-CEP will play at your school. As mentioned, your selection should be made with the students' and parents' privacy rights in mind.

Before the ASVAB-CEP test date is scheduled, a counselor must select one of eight different "Options for Recruiter Contact." The option you select will apply to all students who take the ASVAB-CEP. These options determine whether and when student test scores can be released to military recruiters. See Table 2 for more details regarding each recruiter contact option.

To be clear, students do not select a recruiter contact option. You, as a counselor, are the only one authorized to make that choice before administering the test. If you fail to select any of the available options, the default selection is Option 1. That means student test results will be released to military recruiters, who may contact students a week after test scores are mailed, even if the students do not want that to happen.

Many counselors are under the misimpression that the Privacy Act Statement that students must sign and date before they take the test gives students notice of the release of test results to military recruiters. The Privacy Act Statement, however, says nothing about recruiter contact. The statement is not a proper waiver of rights because: (1) the statement does not disclose that ASVAB-CEP test results may be used for recruitment purposes, and (2) it does not do away with the obligation to obtain consent from a parent or guardian when a student is under age 18.

Under Option 8, the ASVAB-CEP serves entirely as a career exploration tool and can also be used as a way to explore military careers.⁷ Students – if they choose to – may still use their test results for military enlistment purposes. But the choice to release their results is made by them, not you. Option 8 thus, gives students the most flexibility.

Under Options 1 through 6, the ASVAB-CEP serves not only as a career exploration tool but also as a military recruitment tool, whether the student is interested in a military career or not. Under Options 1 through 6, student test results are released to military recruiters at varying time intervals once their test scores have been mailed.⁸

Under Option 7 test results are not valid for enlistment purposes. Option 7 will be selected by the U.S. Military Entrance Processing Command if timing protocols were not properly followed or in cases of suspected cheating.

In short, students and their families will not know which recruiter contact option you have selected unless and until you tell them. Also, they will most likely not know the nature and significance of the test. Your role is to ensure that students and their families have sufficient information to decide whether or not the ASVAB-CEP (as you have chosen to administer it) is an appropriate tool to help evaluate their post-secondary school goals and options.

2. Select Option 8.

Selecting Option 8 is a best practice because it both gives students the greatest flexibility and satisfies your professional obligations. This means that student test results will remain confidential within the student/school counselor relationship. At the same time, Option 8 also allows students to later use test results to pursue a military career.

As previously stated, if you do not make a selection, the default is Option 1, which will release student test results to military recruiters as soon as seven days after test results are mailed.

Another reason to select Option 8 is that it ensures compliance with federal law. With the passage of the No Child Left Behind Act (NCLB) in 2001,⁹ Congress made clear that parents and guardians (as well as students) have the right to keep their child’s contact information from military recruiters, unless they give prior written consent.¹⁰ Furthermore, NCLB requires schools to notify parents of this right.¹¹ Option 8 satisfies these requirements.

Jurisdictions, including ones with major military bases, like Hawaii, Maryland, and San Diego, have mandated the selection of Option 8 to protect student privacy for ASVAB-CEP testing in public schools. For example, in 2009, Hawaii adopted, through its Department of Education, a statewide policy that all public schools must select Option 8.¹² Similarly, in 2010, a Maryland state statute went into effect that requires each public school in the state that plans to administer the ASVAB-CEP to select Option 8, “to prohibit the general release of any student information to military recruiters.”¹³ The statute makes clear that students and their families may eventually choose to release their scores to military recruiters by submitting the required forms to military recruiting services.¹⁴ New York City and Los Angeles have also mandated that counselors select Option 8.

Table 2. Recruiter Contact Options Summary

<p>Military recruiters may contact students once ASVAB-CEP test results are mailed after:</p> <ul style="list-style-type: none"> Option 1 (7 days) Option 2 (60 days) Option 3 (90 days) Option 4 (120 days) Option 5 (end of school year) Option 6 (7 days, but recruiters may <u>not</u> solicit by telephone)
<p>Option 7 (results invalidated)</p>
<p>Military recruiters may <u>not</u> contact students without consent:</p> <ul style="list-style-type: none"> ✔ Option 8 (results not released without consent)

BEST PRACTICES

There are at least four general best practices to follow when administering the ASVAB-CEP:

1. Make Clear that Participation is Voluntary.

It is a best practice to make sure students and their parents or guardians know that the ASVAB-CEP is voluntary. Many students and their families mistakenly believe that the test is mandatory. That is not the case.

Although these jurisdictions have opted to mandate selecting Option 8 by law, no such mandate is needed. You should select Option 8 because it best protects students' and parents' rights and offers the flexibility for career planning.

3. Publicize the Exam's Purposes.

It is a best practice to inform both students and parents about the purposes of the ASVAB-CEP. This practice is consistent with ASCA's Ethical Standards regarding the selection and administration assessment measures, as well as more generally with the obligation to protect both students' privacy and their parents' or guardians' rights. Similarly, the Association for Research Counseling recommends that test takers should "receive a brief oral or written explanation prior to testing about the purpose(s) for testing, the kind(s) of tests to be used, if the results will be reported to you or to others, and the planned use(s) of the results."¹⁵ This is to ensure "that only individuals who have a legitimate right to access [test results] will be able to."¹⁶ That means students must be informed that their test results and contact information will be released to military recruiters to provide qualified leads for recruitment purposes when Options 1 through 6 have been selected.

Notification requirements are widely recognized throughout the student testing industry. Organizations that have similar notification provisions in their ethical codes include: The American Psychological Association, whose standards are adhered to by EDITS the creator of CAPS/COPS, The Occupational Information Network which was created for the U.S. Department of Labor's Employment and Training Association, The National Career Development Association, The American Counseling Association, The American School Counselor's Association, The Alliance of Career Resources Professionals, The Association for Resource Counseling, and ACT (formerly American College Testing). These organizations' ethical codes establish that all of the test's purposes must be made clear to test takers prior to testing. As such, you must also publicize which release option you have selected so that students

and families can determine whether they would like to participate in the program.

4. Obtain Informed Consent Using a Simple Form.

Obtaining informed consent is a best practice. Accordingly, under section A.5.c. of ASCA's Ethical Standards counselors must "request a release of information signed by the student and/or parents/guardians when attempting to develop a collaborative relationship with other service providers."¹⁷ Furthermore, standards state that counselors must understand that the "primary obligation for confidentiality is to the students but balance that obligation with an understanding of parents'/guardians' legal and inherent rights to be the guiding voice in their children's lives, especially in value-laden issues."¹⁸

It is a best practice to obtain informed consent from both students and their parents or guardians as a prerequisite to ASVAB-CEP participation – especially when you have selected Options 1 through 6, or have failed to select an option. To accomplish this, prepare a consent form that explains the purpose(s) of the test; that is, whether it will serve solely as a career exploration tool (Option 8), or also as a means to provide military recruiters with information that may be used to contact a student for military recruitment (Options 1 through 6). You can do this with a simple one-page form (a sample form appears in Appendix A).

To make sure that students understand the purpose(s) of the test, and which recruiter contact option you have selected, you should require each student and his or her parent or guardian to sign a consent form before the student is allowed to sit for the test. It is especially important to obtain parental consent when students who plan to take the test are under age 18.

LEGAL CONSIDERATIONS

The best practices described above take into account not only a counselor's ethical and professional obligations, but also legal considerations regarding a student's privacy rights and legal rights of their families.

Student Privacy Rights

According to the Preamble of ASCA's Ethical Standards, you owe a duty to students to "comply with all laws, policies and ethical standards pertaining to confidentiality in the school setting."¹⁹ In order to uphold this obligation, you must be knowledgeable of the legal considerations discussed below so you can "strive to protect and inform students regarding their rights."²⁰

Students have a right to privacy according to the U.S. Constitution and their respective state constitutions. The United States Supreme Court has recognized two privacy interests grounded in the Fourteenth Amendment's concept of personal liberty – a person's interest in: (1) making personal decisions, and (2) avoiding disclosure of personal information.²¹ This means that students have a legal interest in controlling the dissemination of their personal information, and a legal interest in limiting the prospect of unsolicited contact.²² If students are unaware that their test scores and contact information will be released to military recruiters, they cannot exercise these constitutional privacy rights.

A student's privacy interests in his or her ASVAB-CEP test scores is heightened because of the sensitive nature of the information involved.²³ This is so because test results speak to a student's basic competence.²⁴ The ASVAB-CEP assesses a student's ability to learn new skills and predicts his or her success in a wide array of occupations, both civilian and military.²⁵ Thus, a student's privacy interest in his or her aptitude scores is better protected under Option 8 because her results will not be released to military recruiters without her consent. Students can later decide for themselves whether or not

to engage with military recruiters.

Students also have a legal interest in limiting unsolicited contact by recruiters.²⁶ The ASVAB-CEP results include the most current contact information for each student.²⁷ Military recruiters use that information to contact students who have scored well to see if they would be interested in a military career. This may result in unwanted contact for students who are not interested in a military career and who were not told that their ASVAB-CEP test results will be released to military recruiters.

Parent / Guardian Rights

Counselors also have a legal and ethical obligation to uphold the rights of parents or guardians.²⁸ Parents and guardians should be required to sign a consent form that notifies them that the ASVAB-CEP will be given at your school, which option you have selected, and the implications of that selection.

Since 1925 the U.S. Supreme Court has recognized the "fundamental right" of parents or guardians to make decisions regarding "the care, custody, and control of their children."²⁹ Therefore, parents and guardians – regardless of which recruiter contact option is selected – have a legal interest in deciding whether or not they would like their children (i.e., legal minors under the age of 18) to participate in the ASVAB-CEP program. In fact, parents and guardians may even encourage their children to take advantage of this opportunity. So, they should be included in the decision-making process.

CONCLUSION

Your professional obligation is to let families decide how to use students' test results. As a general course, you must inform students and families that the ASVAB-CEP is not a mandatory test. This can be accomplished through a simple consent form. Additionally, by selecting Option 8 when you choose to administer the ASVAB-CEP, you are ensuring that both students' privacy rights and families' legal rights are protected. Option 8 allows families to use the ASVAB-CEP as they wish: to explore civilian careers, military careers, or both.

ENDNOTES

1. AMERICAN SCHOOL COUNSELOR ASSOCIATION, ASCA POSITION STATEMENTS 1 (2012) available at <http://www.schoolcounselor.org/files/PositionStatements.pdf>.
2. DEFENSE MANPOWER DATA CENTER, P&P-ASVAB FORMS 23-27, TECHNICAL BULLETIN NO. 4 (2012), available at http://official-asvab.com/docs/asvab_techbulletin_4.pdf.
3. AMERICAN SCHOOL COUNSELOR ASSOCIATION, Ethical Standards for School Counselors § A.2.C. (2012) [hereinafter ETHICAL STANDARDS] available at <http://www.schoolcounselor.org/files/EthicalStandards2010.pdf>.
4. Id. at § A.9.B.
5. Id. at § A.9.e.
6. ASVAB Career Exploration Program: Counselor Guide 1 (U.S. Dep't of Def.) [hereinafter Counselor Guide] available at http://www.asvabprogram.com/downloads/asvab_counselor_manual.pdf; United States Army Recruiting Command: Recruiter Handbook 6-3, 6-4, 6-5 (U.S. Dep't of Def. 2011) [hereinafter Recruiter Handbook] available at http://www.usarec.army.mil/im/formpub/rec_pubs/man3_01.pdf.
7. COUNSELOR GUIDE, supra note 6, at 14.
8. Id.
9. Pub. L. No. 107-110, 115 Stat. 1425 (2002) (codified in scattered sections of 20 U.S.C.).

10. 20 U.S.C. § 7908(a)(2).
11. § 7908(a)(2).
12. Tina Trenkner, Protecting Student Test Scores from Recruiters, *Governing.com*, July 2010, available at <http://www.governing.com/topics/education/Protecting-Student-Test-Scores-From-Recruiters.html>.
13. Md. Code Ann., Educ. § 7-111(2) (West).
14. Id.
15. Rights and Responsibilities of Test Takers: Guidelines and Expectations 4 (1998).
16. Id.
17. ETHICAL STANDARDS, supra note 3, at § A.5.c.
18. Id. at § A.2.d.
19. Id. at Preamble.
20. Id. at A.1.d.
21. *Whalen v. Roe*, 429 U.S. 589 (1977).
22. *U.S. Dep't of Defense v. Federal Labor Relations Auth.*, 510 U.S. 487, 501 (1994).
23. *See Detroit Edison Co. v. NLRB*, 440 U.S. 301 (1979).
24. Id. at 318.
25. ASVAB-CEP FACTSHEET (U.S. Dep't of Def.) available at http://www.asvabprogram.com/downloads/ASVAB_factsheet-CEP_overview_materials.pdf.
26. *See U.S. Dep't of Defense*, 510 U.S. at 501.
27. RECRUITER HANDBOOK, supra note 6, at 6-5.
28. ETHICAL STANDARDS, supra note 3, at A.2.d.
29. *Pierce v. Society of Sisters*, 268 U.S. 510 (1925); see also *Troxel v. Granville*, 530 U.S. 57, 65-66 (2000) (collecting subsequent cases).

ASVAB-CEP Testing Permission Slip

The Armed Services Vocational Aptitude Battery Career Exploration Program (ASVAB-CEP) will be administered on: ___/___/_____ (date). Only students who have returned this signed permission form may participate. The ASVAB-CEP is **NOT** mandatory. The ASVAB-CEP is an aptitude test that can help students discover their interests, abilities, and explore future careers. The ASVAB-CEP is provided at no cost by the U.S. Military. Test results, however, may also be used for military enlistment purposes. Your school guidance counselor has chosen the following release option for all students who will take the test:

- Results and student contact information is released to military recruiters. Recruiters may contact students after tests are graded (Option 1 - 6).
- Results are **NOT** released to military recruiters without consent. Students may use results for future enlistment purposes if they choose to do so (Option 8).

If you do not want your child to take the ASVAB-CEP do not sign this form and instruct your child not to take the test.

If you would like your child to take the ASVAB-CEP, a parent or guardian must sign this permission slip. If this permission slip is not signed and returned, your child will not be allowed to take the ASVAB-CEP.

I, _____ (Parent/Guardian Name, or Student over age 18)

hereby give permission for _____ (Student's Name) to take the ASVAB-CEP under the recruiter contact option selected above.

Signature of Parent/Guardian _____ Date: _____

Signature of Student _____ Date: _____

Student's Date of Birth _____