Senate Engrossed House Bill

parental rights; schools; educational records

State of Arizona
House of Representatives
Fifty-fifth Legislature
Second Regular Session
2022

CHAPTER 200

HOUSE BILL 2161

AN ACT

AMENDING SECTIONS 1-602, 15-102 AND 15-117, ARIZONA REVISED STATUTES; AMENDING TITLE 15, CHAPTER 1, ARTICLE 4, ARIZONA REVISED STATUTES, BY ADDING SECTION 15-143; RELATING TO PARENTAL RIGHTS.

(TEXT OF BILL BEGINS ON NEXT PAGE)
Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 1-602, Arizona Revised Statutes, is amended to read:

1-602. Parents' bill of rights; governmental interference restricted; burden of proof; definition

A. All parental rights are EXCLUSIVELY reserved to a parent of a minor child without obstruction or interference from this state, any political subdivision of this state, any other governmental entity or any other institution, including:

1. The right to direct the education of the minor child.

2. All rights of parents identified in title 15, including the right to access and review all records relating to the minor child.

3. The right to direct the upbringing of the minor child.

4. The right to direct the moral or religious training of the minor child.

5. The right to make ALL health care decisions for the minor child, including rights pursuant to sections 15-873, 36-2271 and 36-2272, unless otherwise prohibited by law.

6. The right to REQUEST, access and review all WRITTEN AND ELECTRONIC medical records of the minor child unless otherwise prohibited by law or UNLESS the parent is the subject of an investigation of a crime committed against the minor child and a law enforcement official requests that the information not be released.

7. The right to consent in writing before a biometric scan of the minor child is made pursuant to section 15-109.

8. The right to consent in writing before any record of the minor child's blood or deoxyribonucleic acid is created, stored or shared, except as required by section 36-694, or before any genetic testing is conducted on the minor child pursuant to section 12-2803 unless authorized pursuant to section 13-610 or a court order.

9. The right to consent in writing before the THIS state or any of its political subdivisions makes a video or voice recording of the minor child, unless the video or voice recording is made during or as a part of a court proceeding, by law enforcement officers during or as part of a law enforcement investigation, during or as part of an interview in a criminal or child safety services investigation or to be used solely for any of the following:

(a) Safety demonstrations, including the maintenance of order and discipline in the common areas of a school or on pupil transportation vehicles.

(b) A purpose related to a legitimate academic or extracurricular activity.

(c) A purpose related to regular classroom instruction.

(d) Security or surveillance of buildings or grounds.

(e) A photo identification card.
10. The right to be notified promptly if an employee of this state, any political subdivision of this state, any other governmental entity or any other institution suspects that a criminal offense has been committed against the minor child by someone other than a parent, unless the incident has first been reported to law enforcement and notification of NOTIFYING the parent would impede a law enforcement or child safety services investigation. This paragraph does not create any new obligation for school districts and charter schools to report misconduct between students at school, such as fighting or aggressive play, that is routinely addressed as a student disciplinary matter by the school.

11. The right to obtain information about a child safety services investigation involving the parent pursuant to section 8-807.

B. This section does not authorize or allow a parent to engage in conduct that is unlawful or to abuse or neglect a child in violation of the laws of this state. This section does not prohibit courts, law enforcement officers or employees of a government agency responsible for child welfare from acting in their official capacity within the scope of their authority. This section does not prohibit a court from issuing an order that is otherwise permitted ALLOWED by law.

C. Any attempt to encourage or coerce a minor child to withhold information from the child's parent shall be IS grounds for discipline of an employee of this state, any political subdivision of this state, or any other governmental entity OR ANY OTHER INSTITUTION, except for law enforcement personnel.

D. Unless those rights have been legally waived or legally terminated, parents have inalienable rights that are more comprehensive than those listed in this section. This chapter does not prescribe all rights of parents OR PREEMPT OR FORECLOSE CLAIMS OR REMEDIES IN SUPPORT OF PARENTAL RIGHTS THAT ARE AVAILABLE UNDER THE CONSTITUTION, STATUTES OR COMMON LAW OF THIS STATE. Unless otherwise required by law, the rights of parents of minor children shall not be limited or denied.

E. EXCEPT AS PRESCRIBED IN SUBSECTIONS F AND G OF THIS SECTION, THIS STATE, A POLITICAL SUBDIVISION OF THIS STATE OR ANY OTHER GOVERNMENTAL ENTITY, OR ANY OFFICIAL OF THIS STATE, A POLITICAL SUBDIVISION OF THIS STATE OR ANY OTHER GOVERNMENTAL ENTITY ACTING UNDER COLOR OF LAW, SHALL NOT INTERFERE WITH OR USURP THE FUNDAMENTAL RIGHT OF PARENTS TO DIRECT THE UPBRINGING, EDUCATION, HEALTH CARE AND MENTAL HEALTH OF THEIR CHILDREN. A PARENT MAY BRING SUIT AGAINST A GOVERNMENTAL ENTITY OR OFFICIAL DESCRIBED IN THIS SUBSECTION BASED ON ANY VIOLATION OF THE STATUTORY RIGHTS SET FORTH IN THIS CHAPTER OR ANY OTHER ACTION THAT INTERFERES WITH OR USURPS THE FUNDAMENTAL RIGHT OF PARENTS TO DIRECT THE UPBRINGING, EDUCATION, HEALTH CARE AND MENTAL HEALTH OF THEIR CHILDREN IN THE SUPERIOR COURT IN THE COUNTY IN WHICH THE VIOLATION OR OTHER ACTION OCCURS OR IN FEDERAL COURT, IF AUTHORIZED BY FEDERAL LAW, OR BEFORE AN
ADMINISTRATIVE TRIBUNAL OF APPROPRIATE JURISDICTION. A PARENT MAY RAISE A VIOLATION OF THIS CHAPTER AS A CLAIM OR A DEFENSE.

F. IN ANY ACTION UNDER SUBSECTION E OF THIS SECTION, THE GOVERNMENTAL ENTITY OR OFFICIAL DESCRIBED IN SUBSECTION E OF THIS SECTION HAS THE BURDEN OF PROOF TO DEMONSTRATE BOTH OF THE FOLLOWING:

1. THAT THE INTERFERENCE OR USURPATION IS ESSENTIAL TO ACCOMPLISH A COMPELLING GOVERNMENT INTEREST OF THE HIGHEST ORDER, AS LONG RECOGNIZED IN THE HISTORY AND TRADITIONS OF THIS STATE IN THE OPERATION OF ITS REGULATORY POWERS.

2. THAT THE METHOD OF INTERFERENCE OR USURPATION USED BY THE GOVERNMENT IS NARROWLY TAILORED AND IS NOT OTHERWISE SERVED BY A LESS RESTRICTIVE MEANS.

G. A GOVERNMENTAL ENTITY OR OFFICIAL DESCRIBED IN SUBSECTION E OF THIS SECTION MAY INTERFERE WITH OR USURP THE FUNDAMENTAL RIGHT OF PARENTS TO DIRECT THE UPBRINGING, EDUCATION, HEALTH CARE AND MENTAL HEALTH OF THEIR CHILDREN ONLY IF THE GOVERNMENTAL ENTITY OR OFFICIAL SUCCESSFULLY DEMONSTRATES BOTH ELEMENTS DESCRIBED IN SUBSECTION F OF THIS SECTION. IF THE GOVERNMENTAL ENTITY OR OFFICIAL IS UNSUCCESSFUL, THE COURT SHALL GRANT APPROPRIATE RELIEF, SUCH AS DECLARATORY OR INJUNCTIVE RELIEF, COMPENSATORY DAMAGES AND ATTORNEY FEES, BASED ON THE FACTS OF THE CASE AND THE LAW AS APPLIED TO THE FACTS.

H. For the purposes of this section, "parent" means the natural or adoptive parent or legal guardian of a minor child.

Sec. 2. Section 15-102, Arizona Revised Statutes, is amended to read:

15-102. Parental involvement in the school; definition
A. The EACH SCHOOL DISTRICT governing board, in consultation with parents, teachers and administrators, shall develop and adopt a policy to promote the involvement of parents and guardians of children enrolled in the schools within the school district, including:

1. A plan for parent participation in the schools that is designed to improve parent and teacher cooperation in such areas as homework, attendance and discipline. The plan shall provide for the administration of a parent-teacher satisfaction survey.

2. Procedures by which parents may learn about the course of study for their children and review learning materials, including the source of any supplemental educational materials.

3. Procedures by which parents who object to any learning material or activity on the basis that the material or activity is harmful may withdraw their children from the activity or from the class or program in which the material is used. Objection to a learning material or activity on the basis that the material or activity is harmful includes objection to the material or activity because it questions beliefs or practices in sex, morality or religion.
4. If a school district offers any sex education curricula pursuant to section 15-711 or 15-716 or pursuant to any rules adopted by the state board of education, procedures to prohibit the school district from providing sex education instruction to a pupil unless the pupil's parent provides written permission for the child to participate in the sex education curricula.

5. Procedures by which parents will be notified in advance of and given the opportunity to opt their children in to any instruction, learning materials or presentations regarding sexuality, in courses other than formal sex education curricula.

6. Procedures by which parents may learn about the nature and purpose of clubs and activities that are part of the school curriculum, extracurricular clubs and activities that have been approved by the school.

7. Procedures by which parents may learn about parental rights and responsibilities under the laws of this state, including the following:
   (a) The right to opt in to a sex education curriculum if one is provided by the school district.
   (b) Open enrollment rights pursuant to section 15-816.01.
   (c) The right to opt out of assignments pursuant to this section.
   (d) The right to opt out of immunizations pursuant to section 15-873.
   (e) The promotion requirements prescribed in section 15-701.
   (f) The minimum course of study and competency requirements for graduation from high school prescribed in section 15-701.01.
   (g) The right to opt out of instruction on acquired immune deficiency syndrome pursuant to section 15-716.
   (h) The right to review test results pursuant to section 15-743.
   (i) The right to participate in gifted programs pursuant to section 15-779.01.
   (j) The right to access instructional materials pursuant to section 15-730.
   (k) The right to receive a school report card pursuant to section 15-746.
   (m) The right to public review of courses of study and textbooks pursuant to sections 15-721 and 15-722.
   (n) The right to be excused from school attendance for religious purposes pursuant to section 15-806.
   (o) Policies related to parental involvement pursuant to this section.
   (p) The right to seek membership on school councils pursuant to section 15-351.
(q) Information about the student accountability information system as prescribed in section 15-1041.

(r) The right to access the failing schools tutoring fund pursuant to section 15-241.

(s) THE RIGHT TO ACCESS ALL WRITTEN AND ELECTRONIC RECORDS OF A SCHOOL DISTRICT OR SCHOOL DISTRICT EMPLOYEE CONCERNING THE PARENT'S CHILD PURSUANT TO SECTION 15-143.

B. The policy adopted by the governing board pursuant to this section may also include the following components:

1. A plan by which parents will be made aware of the district's parental involvement policy and this section, including:
   (a) Rights under the family educational rights and privacy act of 1974 (20 United States Code section 1232g) relating to access to children's official records.
   (b) The parent's right to inspect the school district policies and curriculum.

2. Efforts to encourage the development of parenting skills.

3. Communicating to parents techniques that are designed to assist the child's learning experience in the home.

4. Efforts to encourage access to community and support services for children and families.

5. Promoting communication between the school and parents concerning school programs and the academic progress of the parents' children.

6. Identifying opportunities for parents to participate in and support classroom instruction at the school.

7. Efforts to support, with appropriate training, parents as shared decision-makers and to encourage membership on school councils.

8. Recognizing the diversity of parents and developing guidelines that promote widespread parental participation and involvement in the school at various levels.

9. Developing preparation programs and specialized courses for certificated employees and administrators that promote parental involvement.

10. Developing strategies and programmatic structures at schools to encourage and enable parents to participate actively in their children's education.

C. The governing board may adopt a policy to provide to parents the information required by this section in an electronic form.

D. A parent shall submit a written request for information pursuant to this section during regular business hours to either the school principal at the school site or the superintendent of the school district at the office of the school district. Within ten days after receiving the request for information, the school principal or the superintendent of the school district shall either deliver the requested information to the
parent or submit to the parent a written explanation of the reasons for
denying the requested information. If the request for information is
denied or the parent does not receive the requested information within
fifteen days after submitting the request for information, the parent may
submit a written request for the information to IN WRITING FROM the school
district governing board, which shall formally consider the request at the
next scheduled public meeting of the governing board if the request can be
properly noticed on the agenda. If the request cannot be properly noticed
on the agenda, the governing board shall formally consider the request at
the next subsequent public meeting of the governing board.

E. For the purposes of this section, "parent" means the natural or
adoptive parent or legal guardian of a minor child.

Sec. 3. Section 15-117, Arizona Revised Statutes, is amended to
read:

15-117. Surveys; pupil information; parental permission and
informed consent; exceptions; penalties;
definitions

A. Notwithstanding any other law, each school district and charter
school shall obtain written informed consent from the parent of a pupil
before administering any survey that is retained by a school district, a
charter school or the department of education for longer than one year and
that solicits personal information about the pupil regarding any of the
following:

1. Critical appraisals of another person with whom a pupil has a
close relationship.
2. Gun or ammunition ownership.
3. Illegal, antisocial or self-incriminating behavior.
4. Income or other financial information.
5. Legally recognized privileged or analogous relationships, such as
   relationships with a lawyer, physician or member of the clergy.
6. Medical history or medical information.
7. Mental health history or mental health information.
8. Political affiliations, opinions or beliefs.
10. The quality of home interpersonal relationships.
11. Religious practices, affiliations or beliefs.
12. Self-sufficiency as it pertains to emergency, disaster and
    essential services interruption planning.
13. Sexual behavior or attitudes.

B. At the beginning of every school year LEAST SEVEN DAYS BEFORE
ADMINISTERING ANY SURVEY TO A PUPIL, every school district and charter
school shall PROVIDE A COPY OF THE SURVEY TO THE PUPIL'S PARENT ALONG WITH
A WRITTEN INFORMED CONSENT FORM AND SHALL obtain written informed consent
from the PUPIL'S parent of a FOR THE pupil to participate in any THE
survey pursuant to subsection A of this section for the entire year. A pupil's parent may at any time revoke consent for the pupil to participate in any survey pursuant to subsection A of this section. For any pupil who is at least eighteen years of age, the permission or consent that would otherwise be required from the pupil's parent pursuant to this section is required only from the pupil. All surveys conducted pursuant to subsection A of this section shall be approved and authorized by the school district or charter school. The school district or charter school is subject to the penalties prescribed in subsection L of this section. A teacher or other school employee may not administer any survey pursuant to subsection A of this section without written authorization from the school district or charter school.

C. This section applies to all surveys conducted pursuant to subsection A of this section:

1. Regardless of the stated purpose of the survey.
2. Regardless of the quantity or percentage of questions that solicit data pursuant to subsection A of this section.
3. Including written or digital surveys.

D. This section does not apply to:

1. Mental health screening pursuant to section 15-104 or the identification of or programming for children with disabilities or gifted pupils pursuant to chapter 7, articles 4 and 4.1 of this title.
2. Class instruction, discussion or assignments on subjects within the purview of the course.
3. Private schools.
4. Any exam administered by a nationally recognized college entrance or career readiness exam provider that a student chooses to take regardless if the administration of the exam takes place on public school property, regardless of whether the exam is taken during the school day.
5. Any survey conducted that contains questions soliciting information pursuant to subsection A of this section if the survey does not require a student's name or any other personally identifiable information.

E. A penalty may not be imposed on a pupil or the parent of a pupil who does not participate in any survey conducted pursuant to subsection A of this section. Participation in any survey pursuant to subsection A of this section is not required:
1. To demonstrate that a pupil has met competency requirements for any grade level, course or subject.
2. For a pupil to qualify for placement into any grade level, course or subject.
3. For a pupil to be promoted to the next grade.
4. For a pupil to receive credit for any course or as part of a letter grade for any course.
5. For a pupil to graduate from high school.
6. For a pupil to obtain a high school equivalency diploma.

F. A school district or charter school shall provide an alternative educational activity for any pupil whose parent does not consent for that pupil to participate in a survey conducted pursuant to subsection A of this section.

G. Any pupil whose parent does not give written informed consent for that pupil to participate in any survey pursuant to subsection A of this section and who attends the alternative educational activity pursuant to this section shall be counted toward daily attendance and average daily membership for the school pursuant to section 15-901 and may not be counted absent from school.

H. Responses to any survey pursuant to subsection A of this section may not be included:
   1. As part of a school academic performance indicator pursuant to section 15-241, or as part of any other similar school rating system.
   2. In the education learning and accountability system pursuant to section 15-249, or in any other similar system.
   3. In the student accountability information system pursuant to section 15-756.10 or 15-1041, or in any other similar system.

I. A penalty may not be imposed on and a reward may not be granted to a teacher, administrator, other school employee, school district, school or charter school based on the pupil participation rate in any survey conducted pursuant to subsection A of this section.

J. On request, a charter school or school district shall provide any available information in a timely manner to the parent of a pupil regarding a survey administered pursuant to subsection A of this section, including:
   1. The name of the survey.
   2. The date or dates on which the survey will be administered.
   3. The method or methods of administering the survey.
   4. The amount of time required to administer the survey.
   5. The type of information collected by the survey.
   6. The reasons for administering the survey.

K. A parent of a pupil that has a reasonable belief that a school district or charter school has violated this section may file a complaint with the attorney general or the county attorney for the county in which an alleged violation of this section occurred. The attorney general or
the county attorney for the county in which an alleged violation of this section occurred may initiate a suit in the superior court in the county in which the school district or charter school is located for the purpose of complying with this section. After receiving written notice of an alleged failure to comply with this section, a school district or charter school that determines that a violation has occurred is not subject to a penalty or cause of action under this section if the school district or charter school cures the violation. For the purposes of this subsection, "cure" means to destroy any information gathered in violation of this section and to provide written instruction to the individual circulating the survey, to be kept on file for one year after receipt of the written notice of the alleged failure to comply.

L. For each violation of this section, the court may impose a civil penalty not to exceed five hundred dollars $500. The school district or charter school determined to be out of compliance with this section shall be responsible for the payment of all penalties.

M. An attorney acting on behalf of a public school may request a legal opinion of the county attorney or attorney general as to whether the public school would violate this section.

N. All penalties collected by the court for a suit initiated in superior court by the attorney general shall be paid to the office of the attorney general for the use and reimbursement of costs of prosecution pursuant to this section. All penalties collected by the court for a suit initiated in superior court by a county attorney shall be paid to the county treasurer of the county in which the court is held for the use and reimbursement of costs of prosecution pursuant to this section.

O. For the purposes of this section:

1. "Parent" has the same meaning prescribed in section 15-101, except that parent does not mean this state if the pupil is a ward of the state.

2. "Survey" means:

   (a) When used as a noun, an instrument that investigates the attitudes, behaviors, beliefs, experiences, opinions or thoughts of a pupil or group of pupils.

   (b) When used as a verb, to use an instrument to investigate the attitudes, behaviors, beliefs, experiences, opinions or thoughts of a pupil or group of pupils.

Sec. 4. Title 15, chapter 1, article 4, Arizona Revised Statutes, is amended by adding section 15-143, to read:

15-143. Educational records; rights of parents

A. IN ACCORDANCE WITH THE RIGHTS SECURED UNDER SECTION 1-602, SUBSECTION A, PARAGRAPH 2, A PARENT SHALL HAVE ACCESS TO ALL WRITTEN AND ELECTRONIC RECORDS OF A SCHOOL DISTRICT OR CHARTER SCHOOL OR A SCHOOL DISTRICT OR CHARTER SCHOOL EMPLOYEE CONCERNING THE PARENT'S CHILD AND TO
ALL ELECTRONIC ACCOUNTS OF THE PARENT’S CHILD, INCLUDING ALL OF THE FOLLOWING:
1. ATTENDANCE RECORDS.
2. TEST SCORES OF SCHOOL-ADMINISTERED TESTS AND STATEWIDE ASSESSMENTS.
3. GRADES.
4. EXTRACURRICULAR ACTIVITIES OR CLUB PARTICIPATION.
5. DISCIPLINARY RECORDS.
6. COUNSELING RECORDS.
7. PSYCHOLOGICAL RECORDS.
8. APPLICATIONS FOR ADMISSION.
9. HEALTH AND IMMUNIZATION INFORMATION, INCLUDING ANY MEDICAL RECORDS THAT ARE MAINTAINED BY A HEALTH CLINIC OR MEDICAL FACILITY OPERATED OR CONTROLLED BY THE SCHOOL DISTRICT OR CHARTER SCHOOL OR THAT ARE LOCATED ON SCHOOL DISTRICT OR CHARTER SCHOOL PROPERTY.
10. TEACHER AND COUNSELOR EVALUATIONS.
11. REPORTS OF BEHAVIORAL PATTERNS.
12. EMAIL ACCOUNTS.
13. ONLINE OR VIRTUAL ACCOUNTS OR DATA.

B. A PARENT MAY FILE SUIT AGAINST A SCHOOL DISTRICT OR CHARTER SCHOOL THAT VIOLATES SUBSECTION A OF THIS SECTION IN THE SUPERIOR COURT IN THE COUNTY IN WHICH THE VIOLATION OCCURS. THIS SECTION DOES NOT PRECLUDE A PARENT FROM FILING A SUIT ASSERTING A VIOLATION OF THIS SECTION OR ANY OTHER CLAIM OTHERWISE ALLOWED BY LAW.

C. A PARENT WHO SUCCESSFULLY ASSERTS A CLAIM UNDER SUBSECTION A OF THIS SECTION MAY RECOVER:
1. DECLARATORY RELIEF.
2. INJUNCTIVE RELIEF TO PREVENT OR REMEDY A VIOLATION OF SUBSECTION A OF THIS SECTION OR THE EFFECTS OF THE VIOLATION.
3. REASONABLE ATTORNEY FEES AND COSTS.
4. ANY OTHER APPROPRIATE RELIEF.

APPROVED BY THE GOVERNOR APRIL 29, 2022.