



The Parents' Bill of Rights

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Which Way Do We Turn?

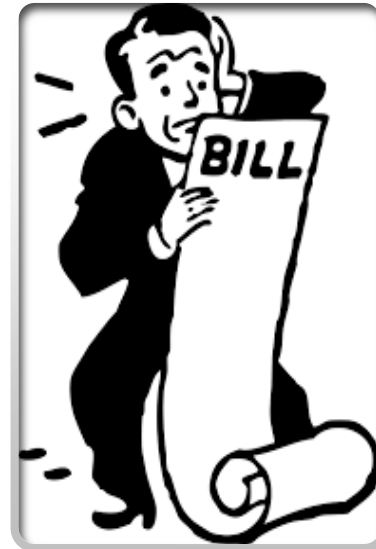
- Overview of the Law – in three parts
- Definition of "School Employee" and relevant oddities
- Provisions of the Law Impacting Student Service Providers
 - Suicide Risk and Threat Assessments
 - Notifications of student physical and mental health
 - Well-being Questionnaires and Health Screening Forms
 - Changes in services or monitoring related to health/well-being
 - Notice of change in name/pronoun

The Campaign for Southern Equality's OCR Complaint

- January 30: the Campaign for Southern Equality filed a complaint with the Office of Civil Rights, alleging certain provisions of PBR discriminate against and create a hostile environment for LGBTQ students, specifically:
 - Prohibiting and removing LGBTQ-affirming instructional material in grades 1-4
 - Notice provisions require schools to "out" students to their parents
 - Creates hurdles to mental health support
 - Requires educators to violate student privacy rights
 - Bars transgender students from athletics*

PART 1: The Bill of Rights, For Parents

- PBR creates a new Chapter 114A of the North Carolina General Statute entitled "Parents' Bill of Rights," including (but not limited to):
 - The right to direct child's education, religious upbringing;
 - **The right to make health care decisions for child;**
 - The right to access health and education records; and
 - The right to be promptly notified when a criminal offense has been committed against his or her child.
- Chapter 114A-15 includes these limitations on the 12 parent rights listed in the chapter:
 - (1) A State official or employee from acting in his or her official capacity within the reasonable and prudent scope of his or her authority.
 - (2) A court of competent jurisdiction from acting in its official capacity within the reasonable and prudent scope of its authority or issuing an order otherwise permitted by law.



PART 2: The 12 Educational Rights of Parents

(Note: The Policy numbers below are from the NCSBA model policies. Make sure that you check your policy numbers because they may be slightly different and/or you may have Administrative Regulations you need to cite. Consult legal counsel if you are unsure.)

- The right to consent or withhold consent for participation in reproductive health and safety education programs, consistent with the requirements of N.C.G.S. § 115C-81.30.
- The right to seek a medical or religious exemption from immunization requirements, consistent with the requirements of N.C.G.S. §§ G.S. 130A-156 and 130A-157.
- The right to review statewide standardized assessment results as part of the State report card.

The 12 Educational Rights of Parents

- The right to request an evaluation of their child for an academically or intellectually gifted program, or for identification as a child with a disability, as provided in Article 9 of Chapter 115C of the North Carolina General Statutes. Board Policies 1310/4002 and 3520.
- The right to inspect **and purchase public school unit textbooks** and other supplementary instructional materials, as provided in Part 3 of Article 8 of Chapter 115C of the North Carolina General Statutes.
- The right to access information relating to the Board's policies for promotion or retention, including high school graduation requirements.

The 12 Educational Rights of Parents

- The right to receive student report cards on a regular basis that clearly depict and grade the student's academic performance in each class or course, **the student's conduct, and the student's attendance.**
- The right to access information relating to the State public education system, State standards, report card requirements, attendance requirements, and textbook requirements.
- The right to participate in parent-teacher organizations.

The 12 Educational Rights of Parents

- Right to opt-in to certain data collection for their child, as provided in N.C.G.S. § 115C-76.65. (i.e., surveys).
- The right for students to participate in protected student information surveys only with parental consent, as provided in N.C.G.S. § 115C-76.65.
- The right to review all available records of materials their child has borrowed from a school library.

Part 2: Yes, there's more!

- **Notice to parents of each health care service offered at school and the means for the parent to provide consent for any specific service.**
- For grades K-3, notice and a copy of any well-being questionnaire or health screening form and the means for the parent to consent.
- Prior notice to parent of any change in the name/pronoun used for student in school records or by school staff.
- Instruction on gender identity, sexual activity, or sexuality is prohibited in grades K-4.

Part 3: Parent Consent for Health Care

- Unless otherwise stated, a health care provider or facility shall not provide, solicit, or arrange treatment for a minor child without first obtaining written or documented parental consent.
- Ch. 90 does contain exceptions:
 - Emergency
 - Delay would endanger the child
 - *Can't find the parent (with reasonable diligence)*
- My favorite language in Part 3:
 - "Treatment" is defined as: "Any medical procedure or treatment...."

Part 3: Parent Consent for Health Care

- Questions to consider:
 - Is consent needed for short, triage type of assessments a school nurse may conduct when a child walks into the nurse's office?
 - Example: feel the forehead, ask simple questions, temperature check?
 - Depends on whether the assessment meets the definition of treatment.
 - Even if consent is not necessary, notice is appropriate under section 2.

Definitions

- School personnel:
 - a. An employee of a PSU, whether full-time or part-time, including substitute teachers, driver training teachers, bus drivers, clerical staff, and custodians.
 - b. An independent contractor or employee of an independent contractor, if the independent contractor:
 1. *carries out duties customarily performed by school personnel,*
 2. has significant access to students, or
 3. whether paid with federal, State, local, or other funds.

Duties Customarily Performed by School Personnel

- Speech Therapist;
- Sign Language Interpreter;
- **School Nurses hired by the local health department;**
- Mental Health Therapist from regional mental health contractor; and
 - Does it matter if you have therapists employed full-time with the district as well?
- Mentor from Non-Profit Agency.



Provisions of PBR Impacting Student Service Providers

Surveys

- "Protected Information Survey" is defined as "any survey, analysis, or evaluation" that reveals information concerning a protected topic.
- PBR requires parent notice and consent prior to administering of a survey.
- PBR only applies to surveys about a protected topic.
- PBR does not have an exception for "emergency circumstances."

Surveys

- Student surveys on protected topics must have parent permission (opt in):
 - Political affiliation or beliefs;
 - **Mental/psychological problems;**
 - **Sexual behaviors;**
 - Illegal or anti-social behavior;
 - Religious practices or beliefs; or
 - Income (other than those required by law).
- Exceptions (must still give notice and ability to opt-out)
 - The Center for Disease Control and Prevention of Youth Risk Behavior Surveillance System; and
 - The National Youth Tobacco Survey.
- Short surveys that tell a teacher how a kid is doing at that moment/on that day are generally okay (e.g., emoji surveys 😊/😞).

Surveys

- Likely applies to **certain formal** mental health screenings, suicide risk assessments, and student threat assessments (if a student is given a formal survey/questionnaire).
- Threat assessments may still be conducted with notice to parent, but a student survey as part of the assessment requires consent.
 - The consent requirement does not prevent the district from conducting a threat assessment, but it may prevent the district from asking the student for information via a formal assessment form without parental consent.
- **Interviewing a student about a violation of the code of conduct is NOT a survey.**

Surveys

- School personnel asking specific questions of students in order to gauge the seriousness or urgency of a situation is **NOT** a "survey."
- A school counselor can discuss suicide with a student and ask important questions. However, before conducting a more formal evaluation or using an assessment tool or instrument, schools should consider whether the assessment requires parental consent.
- **Interviewing a child about the facts of a possible violation of the code of student conduct is not a survey.**

Surveys

- Asking students informal questions will not run afoul of PBR (e.g., How are you? How have you been feeling? Have you had any suicidal thoughts or feelings lately?)
- If you use a written, formal assessment to gauge emotional feelings of students to determine potential mental or psychological problems, then this may qualify as a survey.

Suicide Risk Assessments

- Acquiring basic facts to determine if a student may be contemplating suicide is not a "survey".
- The suicide risk assessment process should be managed carefully by someone appropriately trained to do so (school counselor, school social worker, etc.).
- A school counselor or school social worker may interview a student regarding whether they may be in need of a clinical or diagnostic suicide risk assessment without prior parental notice and consent.
- The DPI Suicide Assessment:
 - If a parent cannot be reached, asking the first six questions in the DPI "Suicide Risk Assessment Checklist" likely does not constitute a "protected information survey" requiring prior parental notice and consent.
 - If a student answers "yes" to any of the six questions, which means the assessor should move onto the other 25 questions, parental consent should be required.

Well-Being Questionnaires and Health Screening Forms

- Part 2: Before any student well-being questionnaire or health screening form is administered to students in kindergarten through 3rd grade, the school shall provide parents with a copy of the questionnaire/form and shall inform parents of how to consent to the use of the questionnaire or form.
- **Likely applies to vision, hearing, and dental screenings.**
- A form might also qualify as a "survey" and thus "opt in" would be required beyond third grade.
- A form might also qualify as a "diagnostic procedure" under the parent consent section for "medical treatment."

Requests for Name/Pronoun Changes

- Name Changes
 - Prior to any changes in the name used for a student in school records or by school personnel, notice must be given to the parent of the change.
 - This provision is not retro-active to prior school years.
- Pronoun Changes
 - Prior to any changes in the pronoun used for a student in school records or by school personnel, notice must be given to the parent of the change.
 - This provision is not retro-active to prior school years.

Part III

Parent "Concerns"

New Requirements

- Application to Transgender Students
 - The Act does not require "parental approval," just notice of the name/pronoun change.
 - The Act does NOT supercede federal law (14th Amendment / Title IX).
 - **Consult your Board Attorney regarding specific student issues.**

Change of Name or Pronoun

- Applies to everyone. . . .
- Teachers will need clear guidance on who to refer these issues to.
- The school district is required to give parent notice of a request to use a preferred name/pronoun. The law does not indicate permission is needed.
- If there is a disagreement between parents and student:
 - If parents agree, provide the name accommodation to the student.
 - If there is a disagreement between parent and student, the school will need to facilitate some discussion between the student and parents.
 - Title IX (*G.G. v. Gloucester BOE*) must be considered if there is a disagreement.
- **If the student does not want to pursue after being told that their parents will be notified, is notice to the parent still required?**

Changes in Services or Monitoring

PSU, shall adopt procedures notifying a parent of the following:

*Prior to or contemporaneous with changes, **notice of changes in services or monitoring** related to his or her child's mental, emotional, or physical health or well-being **and** the school's ability to provide a safe and supportive learning environment for that child.*

What in the world does that mean?

- Types of Potential, Applicable Services
 - School counseling services
 - Check-ins with the counselor or social worker
 - Threat assessment
 - Behavioral Plan
 - Safety Plan
 - Therapy

Changes in Services or Monitoring

- Issues Raised by Campaign for Southern Equality
 - Notice provisions require schools to "out" students to their parents;
 - Creates hurdles to mental health support; and
 - Requires educators to violate student privacy rights.

Student Service Personnel Ethical Requirements

- Most professional/ethical obligations for DPI-licensed personnel (school counselors and school social workers) are not based in statute or regulation.
 - (Not including State Board Standards of Professional Conduct.)
- Professionals with statutory/regulatory ethical codes
 - Licensed Therapists,
 - Doctors,
 - Nurses, and
 - Psychologists.

Student Service Personnel Ethical Requirements

- Statutory Requirements: Nursing Practices Act and related Administrative Code
 - GS 90-171.37: Engages in unprofessional conduct that is nonconforming to the standards of acceptable and prevailing nursing practice or the ethics of the nursing profession, even if a patient is not injured.
- Aspirational: American Nurses Association Code of Ethics
 - ANA 3.1: "The nurse has a duty to maintain confidentiality of all patient information, both personal and clinical in the work setting and off duty in all venues, including social media or any other means of communication.... The duty to maintain confidentiality is **not absolute** and may be limited, as necessary, to protect the patient or other parties, or **by law** or regulations such as mandated reporting for safety or public health reasons."

Student Service Personnel Ethical Requirements

- Interesting Questions:
 - If a service provider's statutory ethical requirement for confidentiality has an exception allowing the disclosure of information "as provided by law," is PBR's requirements sufficient to disclose information to a parent?
 - For example: a student shares that she is pregnant with the school nurse. What is the nurse's ethical obligation regarding disclosure to the parent(s)?
 - Should the blanket notice have information that nurses (and other service providers) regularly keep confidential?

Changes in Services or Monitoring

- Only requires notice of a change in service (or monitoring)
 - For counselors and social workers, may they keep certain conversations confidential so long as the parents have notice of the service being provided and acknowledge the conversations are private?
 - PBR / FERPA requirement for access to student records

Other PBR Requirements - Encouragement

- Encourage students to discuss issues related to well-being with parents;
- Offer to facilitate discussions between parents and students;
- Do not encourage students to withhold information;
- Do not inform staff they must withhold information regarding a student's mental, emotional, or physical health or well-being or a change in related services or monitoring; or
- Do not discourage or prohibit parental notification of and involvement in critical decisions affecting a student's mental, emotional, or physical health or well-being.

In Closing

- PBR can be complicated and there are situations in which PBR will apply that we don't even realize yet.
 - And many of these situations will come with student services personnel, including nurses.
- While certain PBR provisions do target how schools work with LGBTQ students, whether these provisions violate Title IX is up for interpretation.
 - These situations must be addressed carefully on a case-by-case basis



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