

CHAPTER 245

EDUCATION - PUBLIC SCHOOLS

HOUSE BILL 00-1202

BY REPRESENTATIVES Clapp, Dean, Decker, Fairbank, King, Lee, McKay, Nuñez, Paschall, Piffner, Alexander, Grossman, Hefley, Lawrence, McElhany, Mitchell, Scott, and Young;
also SENATORS Musgrave, Congrove, and Lamborn.

AN ACT

CONCERNING ACCESS TO STUDENT INFORMATION.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Article 1 of title 22, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

22-1-123. Protection of student data - parental or legal guardian consent for surveys. (1) AS USED IN THIS SECTION, "EDUCATION RECORDS" AND "DIRECTORY INFORMATION" SHALL HAVE THE SAME MEANING AS THOSE TERMS ARE DEFINED IN THE FEDERAL "FAMILY EDUCATIONAL RIGHTS AND PRIVACY ACT OF 1974", AS AMENDED, 20 U.S.C. SEC. 1232g.

(2) A SCHOOL DISTRICT SHALL COMPLY WITH THE PROVISIONS OF 20 U.S.C. SEC. 1232g (a) AND 34 C.F.R. PART 99 IF A PARENT OR LEGAL GUARDIAN OF A STUDENT EITHER REQUESTS THE EDUCATION RECORDS OF THE STUDENT OR REQUESTS AN AMENDMENT OR OTHER CHANGE TO THE EDUCATION RECORDS AFTER REVIEWING THEM.

(3) A SCHOOL DISTRICT SHALL NOT RELEASE THE EDUCATION RECORDS OF A STUDENT TO ANY PERSON, AGENCY, OR ORGANIZATION WITHOUT THE PRIOR WRITTEN CONSENT OF THE PARENT OR LEGAL GUARDIAN OF THE STUDENT EXCEPT AS OTHERWISE PERMITTED IN 20 U.S.C. SEC. 1232g (b).

(4) A SCHOOL DISTRICT SHALL NOT RELEASE DIRECTORY INFORMATION TO ANY PERSON, AGENCY, OR ORGANIZATION WITHOUT FIRST COMPLYING WITH THE PROVISIONS OF 20 U.S.C. SEC. 1232g (a) (5) (B) RELATED TO ALLOWING A PARENT OR LEGAL GUARDIAN TO PROHIBIT SUCH RELEASE WITHOUT PRIOR CONSENT.

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

(5) (a) A SCHOOL DISTRICT SHALL COMPLY WITH 20 U.S.C. SEC. 1232h. A SCHOOL OR SCHOOL DISTRICT EMPLOYEE WHO REQUIRES PARTICIPATION IN A SURVEY, ANALYSIS, OR EVALUATION IN A PUBLIC SCHOOL'S CURRICULUM OR OTHER OFFICIAL SCHOOL ACTIVITY SHALL OBTAIN THE WRITTEN CONSENT OF A STUDENT'S PARENT OR LEGAL GUARDIAN PRIOR TO THE STUDENT BEING GIVEN ANY SURVEY, ANALYSIS, OR EVALUATION INTENDED TO REVEAL INFORMATION, WHETHER THE INFORMATION IS PERSONALLY IDENTIFIABLE OR NOT, CONCERNING THE STUDENT OR THE STUDENT'S PARENT'S OR LEGAL GUARDIAN'S:

(I) POLITICAL AFFILIATIONS;

(II) MENTAL AND PSYCHOLOGICAL CONDITIONS POTENTIALLY EMBARRASSING TO THE STUDENT OR THE STUDENT'S FAMILY;

(III) SEXUAL BEHAVIOR AND ATTITUDES;

(IV) ILLEGAL, ANTI-SOCIAL, SELF-INCRIMINATING, OR DEMEANING BEHAVIOR;

(V) CRITICAL APPRAISALS OF INDIVIDUALS WITH WHOM A STUDENT HAS CLOSE FAMILY RELATIONSHIPS;

(VI) LEGALLY RECOGNIZED PRIVILEGED OR ANALOGOUS RELATIONSHIPS, SUCH AS THOSE OF LAWYERS, PHYSICIANS, AND MEMBERS OF THE CLERGY; OR

(VII) INCOME, EXCEPT AS REQUIRED BY LAW.

(b) THE REQUIREMENT OF WRITTEN CONSENT PURSUANT TO THIS SUBSECTION (5) SHALL APPLY THROUGHOUT A PUBLIC SCHOOL'S CURRICULUM AND OTHER SCHOOL ACTIVITIES.

(c) WRITTEN CONSENT PURSUANT TO THIS SUBSECTION (5) IS VALID ONLY IF A PARENT OR LEGAL GUARDIAN HAS FIRST BEEN GIVEN WRITTEN NOTICE OF THE SURVEY, ANALYSIS, OR EVALUATION BY THE SCHOOL DISTRICT AND HAS BEEN AFFORDED AT LEAST TWO WEEKS, AFTER RECEIPT OF SUCH NOTICE, TO OBTAIN WRITTEN INFORMATION CONCERNING:

(I) RECORDS OR INFORMATION THAT MAY BE EXAMINED AND REQUESTED IN THE SURVEY, ANALYSIS, OR EVALUATION;

(II) THE MEANS BY WHICH THE RECORDS OR INFORMATION SHALL BE EXAMINED REVIEWED, OR DISSEMINATED;

(III) THE MEANS BY WHICH THE INFORMATION IS TO BE OBTAINED;

(IV) THE PURPOSES FOR WHICH THE RECORDS OR INFORMATION IS NEEDED;

(V) THE ENTITIES OR PERSONS, REGARDLESS OF AFFILIATION, WHO WILL HAVE ACCESS TO THE INFORMATION; AND

(VI) A METHOD BY WHICH A PARENT OR LEGAL GUARDIAN OF A STUDENT CAN

GRANT OR DENY PERMISSION TO ACCESS OR EXAMINE THE RECORDS OR INFORMATION.

(d) NOTHING IN THIS SUBSECTION (5) SHALL BE CONSTRUED TO PREVENT A PUBLIC SCHOOL EMPLOYEE FROM REPORTING KNOWN OR SUSPECTED CHILD ABUSE OR NEGLECT PURSUANT TO SECTION 19-3-304, C.R.S.

(e) NOTHING IN THIS SUBSECTION (5) SHALL BE CONSTRUED TO PREVENT A STUDENT WHO IS WORKING UNDER THE SUPERVISION OF A JOURNALISM TEACHER OR SPONSOR FROM PREPARING OR PARTICIPATING IN A SURVEY, ANALYSIS, OR EVALUATION WITHOUT OBTAINING THE WRITTEN CONSENT OF SUCH STUDENT'S PARENT OR LEGAL GUARDIAN AS LONG AS SUCH PARTICIPATION WITHOUT PARENTAL CONSENT IS NOT OTHERWISE PROHIBITED BY FEDERAL LAW.

(f) NOTHING IN THIS SUBSECTION (5) SHALL BE CONSTRUED TO LIMIT THE ABILITY OF A HEALTH PROFESSIONAL WHO IS ACTING AS AN AGENT OF THE SCHOOL DISTRICT FROM EVALUATING AN INDIVIDUAL CHILD.

(6) IF A SCHOOL DISTRICT SENDS A FORM TO A PARENT OR LEGAL GUARDIAN REQUESTING WRITTEN CONSENT FOR THE SCHOOL DISTRICT TO RELEASE PERSONALLY IDENTIFIABLE INFORMATION CONCERNING THAT PARENT'S OR LEGAL GUARDIAN'S CHILD IN EDUCATION RECORDS OTHER THAN DIRECTORY INFORMATION, SUCH CONSENT SHALL BE VALID UNDER THIS SECTION ONLY IF THE FORM CONTAINS NOTICE TO THE PARENT OR LEGAL GUARDIAN REGARDING:

(a) THE SPECIFIC RECORDS TO BE RELEASED;

(b) THE SPECIFIC REASONS FOR SUCH RELEASE;

(c) THE SPECIFIC IDENTITY OF ANY PERSON, AGENCY, OR ORGANIZATION REQUESTING SUCH INFORMATION AND THE INTENDED USES OF THE INFORMATION;

(d) THE METHOD OR MANNER BY WHICH THE RECORDS WILL BE RELEASED; AND

(e) THE RIGHT TO REVIEW OR TO RECEIVE A COPY OF THE RELEVANT RECORDS TO BE RELEASED.

(7) (a) CONSENT FOR RELEASE OF INFORMATION PURSUANT TO THIS SECTION SHALL BE VALID ONLY FOR THE SPECIFIC INSTANCE FOR WHICH IT WAS GIVEN.

(b) A GENERAL CONSENT FOR A STUDENT TO PARTICIPATE IN ANY COURSE OR PART OF A COURSE, IN A SCHOOL ACTIVITY, IN ANY SPECIAL EDUCATION PROGRAM, OR IN ANY OTHER SCHOOL PROGRAM DOES NOT CONSTITUTE WRITTEN CONSENT PURSUANT TO THIS SECTION.

(c) CONSENT FORMS OBTAINED PURSUANT TO THIS SECTION SHALL BE RETAINED BY THE SCHOOL DISTRICT.

(8) ANY RIGHT ACCORDED TO A PARENT OR LEGAL GUARDIAN PURSUANT TO THIS SECTION SHALL TRANSFER TO THE RELEVANT STUDENT WHEN THAT STUDENT ATTAINS THE AGE OF EIGHTEEN YEARS.

(9) A SCHOOL DISTRICT SHALL, AT THE BEGINNING OF EACH ACADEMIC YEAR, PROVIDE TO A PARENT OR LEGAL GUARDIAN OF EACH STUDENT IN THE SCHOOL DISTRICT WRITTEN NOTICE OF THE RIGHTS CONTAINED IN THIS SECTION.

(10) THE PROVISIONS OF THIS SECTION SHALL APPLY TO ANY PUBLIC SCHOOL IN THE STATE, REGARDLESS OF WHETHER THE PUBLIC SCHOOL RECEIVES ANY FEDERAL FUNDS.

(11) THE STATE BOARD OF EDUCATION SHALL ADOPT SUCH RULES AS MAY BE NECESSARY TO IMPLEMENT THIS SECTION.

(12) IF AN INDIVIDUAL LICENSED, CERTIFIED, ENDORSED, OR AUTHORIZED BY THE STATE BOARD IS FOUND BY THE STATE BOARD TO HAVE KNOWINGLY AND INTENTIONALLY VIOLATED THE PROVISIONS OF THIS SECTION, THE DEPARTMENT OF EDUCATION MAY SUSPEND OR REVOKE SUCH INDIVIDUAL'S LICENSE, CERTIFICATE, ENDORSEMENT, OR AUTHORIZATION FOR A PERIOD NOT LESS THAN NINETY DAYS.

(13) NOTHING IN THIS SECTION SHALL BE CONSTRUED TO PREVENT A SCHOOL OR A SCHOOL DISTRICT FROM RELEASING EDUCATION RECORDS TO THE EXTENT AUTHORIZED BY 20 U.S.C. SEC. 1232g (b) AND ANY OTHER APPLICABLE FEDERAL LAW.

SECTION 2. 22-60.5-107 (5), Colorado Revised Statutes, is amended to read:

22-60.5-107. Grounds for denying, annulling, suspending, or revoking license, certificate, endorsement, or authorization. (5) The state board of education shall promulgate appropriate rules ~~and regulations~~ defining the standards of unethical behavior and professional incompetency, INCLUDING, BUT NOT LIMITED TO, A VIOLATION OF SECTION 22-1-123.

SECTION 3. Effective date. This act shall take effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly that is allowed for submitting a referendum petition pursuant to article V, section 1 (3) of the state constitution; except that, if a referendum petition is filed against this act or an item, section, or part of this act within such period, then the act, item, section, or part, if approved by the people, shall take effect on the date of the official declaration of the vote thereon by proclamation of the governor.

Approved: May 26, 2000