

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1217 Session of
1997

INTRODUCED BY HART, HELFRICK AND SLOCUM, DECEMBER 9, 1997

REFERRED TO EDUCATION, DECEMBER 9, 1997

AN ACT

1 Creating additional protections and safeguards for students and
2 their families in connection with the release of records and
3 information, the collection of information and the providing
4 of health care services; and providing for compliance
5 procedures and remedies.

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4 The General Assembly of the Commonwealth of Pennsylvania
5 hereby enacts as follows:

6 Section 1. Short title.

7 This act shall be known and may be cited as the Student and
8 Family Privacy and Protection Act.

9 Section 2. Declaration of policy.

10 The purpose of this act is to require informed consent for
11 the provision of school health care services, with limited
12 exceptions as outlined by this act, and to protect the privacy
13 of students and their families, and to protect against the
14 inappropriate collection and release of student educational
15 records or student records.

16 Section 3. Definitions.

17 The following words and phrases when used in this act shall
18 have the meanings given to them in this section unless the
19 context clearly indicates otherwise:

20 "Directory information." A student's name, age, municipality
21 of residence, participation in officially recognized activities
22 and sports, including weight and height when the student is a
23 member of an athletic team, and any awards, certificates and
24 diplomas received by the student.

25 "Educational entity." The Department of Education, the State
26 Board of Education, a school district, a vocational-technical
27 school, an intermediate unit and any of their officers,
28 employees or persons acting as their agents.

29 "Health care services." An examination, screening,
30 diagnosis, evaluation or treatment for physical, mental or

1 emotional health problems. The term includes screening,
2 counseling and referrals, for behavioral, social or emotional
3 problems by school support team programs, student assistance
4 programs and similar programs and referrals to and by such
5 programs.

6 "Informed consent." The signature of a parent or guardian of
7 a student giving prior written consent on the form required by
8 section 14 to the release or inspection of a student record or
9 the provision of health care services to the student. For a
10 student who is a high school graduate, is married or is 19 years
11 of age or older, the term means the signature of the student
12 rather than the signature of the parent or guardian of the
13 student.

14 "Instructional materials." All materials to which a student
15 shall or may be directly exposed, including, but not limited to,
16 textbooks, materials in the school library accessible to
17 students, videos, films, tapes, computer discs, charts or
18 graphs.

19 "Medical emergency." A condition in which immediate medical
20 care is necessary to prevent the death or serious impairment of
21 the health of a student.

22 "Parent." A biological or adoptive parent who has legal
23 custody of a student.

24 "Person." An individual, corporation, partnership, limited
25 liability company, business trust, other association, government
26 entity, estate, trust or foundation.

27 "Requirement of Federal law." Any specific mandate imposed
28 by any Federal statute, regulation, court order or consent
29 decree. This term also includes any conditions required in order
30 to participate in the Federal Medicaid program and the Federal

1 special education program provided for under the Individuals
2 with Disabilities Education Act (Public Law 91-230, 20 U.S.C. §
3 1400 et seq.).

4 "School entity." A school district, vocational-technical
5 school or intermediate unit and any of their officers, employees
6 or persons acting as their agent.

7 "Student." A person who is enrolled in a school entity or
8 who becomes subject to the protections accorded under this act
9 by reason of past enrollment in a school entity.

10 "Student educational record." The permanent record or file
11 of a student which may be in the form of an electronic
12 portfolio, including, but not limited to, personal achievement
13 or credit for courses taken, grades, attendance, any graduation
14 project, any disciplinary or behavioral record or information
15 and any other record or information relating to the overall
16 performance of that particular student in regard to the academic
17 educational program, including any other record, other than a
18 student medical record, directly related to the student.

19 "Student record." A student educational record or a student
20 medical record.

21 Section 4. Student records.

22 (a) General rule.--Except for directory information, no
23 educational entity shall release or allow access to any student
24 record or any personal or private information relating to
25 personally identifiable information on the student or family of
26 the student.

27 (b) Exceptions.--Nothing in this act shall prohibit an
28 educational entity from permitting access to or releasing any
29 student record or any personal or private information on the
30 student or family to any of the following persons or under the

1 following circumstances:

2 (1) To law enforcement officials in the course of a
3 criminal investigation.

4 (2) To a court of competent jurisdiction pursuant to a
5 court order or subpoena.

6 (3) To a parent or guardian of the student or to the
7 student if such student is a high school graduate, is married
8 or is 19 years of age or older. Under this paragraph, a
9 student may not authorize the release of personal or private
10 information of a derogatory nature on any other living family
11 member without the written consent of that family member.

12 (4) To any person authorized to receive such information
13 pursuant to the informed written consent of the parent,
14 guardian of the student or the student whose records are
15 sought if such student is 18 years of age or older and is
16 emancipated.

17 (5) Where the release of such information is necessary
18 to protect the immediate health or safety of the student,
19 provided the parent or guardian of the student is given
20 written notification of such release within two business days
21 thereafter.

22 (6) State or local officials or authorities to whom such
23 information must be reported or disclosed pursuant to 23
24 Pa.C.S. Ch. 63 (relating to child protective services) or any
25 other statutory law.

26 (7) Where the release of the information is a
27 requirement of Federal law as certified by the Attorney
28 General.

29 (8) Employees or officers of the school entity within
30 which the student is enrolled who have a legitimate interest

1 in access to such records.

2 (9) Employees or officers of the school entity in which
3 the student transfers or seeks to enroll.

4 (c) Social Security numbers.--Except where required under
5 Federal law, no Social Security number may be used as a personal
6 identifier for a student record. No educational entity shall
7 request or require that the Social Security number of a student
8 be disclosed as a condition of admission to any school entity or
9 for any other reason.

10 Section 5. Health care service protections.

11 (a) Prerequisite of informed consent.--No school entity
12 shall permit its school personnel or any public or private
13 providers of health care services to utilize facilities or
14 resources of the school entity for the purpose of providing
15 health care services to students, unless the informed consent
16 required by this act for the provisions of health services has
17 been obtained on the form under section 14.

18 (b) Special circumstances.--Subsection (a) shall be
19 inapplicable to any of the following:

20 (1) Medical emergencies.

21 (2) A requirement of Federal law as certified by the
22 Attorney General, including individual education plans and
23 other requirements prescribed for special education students
24 under the Individuals with Disabilities Education Act (Public
25 Law 91-230, 20 U.S.C. § 1400 et seq.).

26 (3) Ordinary and reasonable discipline as defined under
27 school policy or that which is necessary to maintain safety
28 or school order.

29 (c) Expansion of authority.--Nothing in this act shall be
30 deemed to expand any legal authority to utilize the resources,

1 personnel or facilities of any school entity to provide health
2 care services.

3 Section 6. Inspection of educational materials.

4 A parent or guardian of the student shall, upon the making of
5 a written request, be entitled to inspect all instructional
6 materials and teacher manuals, other than test questions or
7 examination materials that are used in connection with any
8 course or program taught at the school entity within two
9 business days after the parent or guardian makes a request to
10 inspect such materials. Each school entity shall establish a
11 reasonable procedure for implementing this section.

12 Section 7. Collection of information by an educational
13 institution.

14 (a) General rule.--No school entity shall require or permit
15 a student to participate in any survey, questionnaire, analysis
16 or evaluation that would require or provide for the disclosure
17 of the following information on the student without first
18 obtaining the informed consent required under this act:

19 (1) Personal values, attitudes, opinions or beliefs.

20 (2) Family members' values, attitudes, opinions or
21 beliefs.

22 (3) Religious affiliations or beliefs.

23 (4) Political affiliations or beliefs.

24 (5) Sexual attitudes or beliefs.

25 (6) Sexual behavior.

26 (7) Illegal, anti-social or self-incriminating or
27 demeaning behavior.

28 (8) Critical appraisals of individuals with whom the
29 student has personal relationships.

30 (9) The disclosure of information protected by legally

1 recognized privileged and analogous relationships, such as
2 those of attorneys, medical personnel or ministers.

3 (10) Income, other than required by law to determine
4 eligibility for participation in a program for financial
5 assistance.

6 (11) Mental and psychological problems potentially
7 embarrassing to the student or the student's family.

8 (b) Discussion and testing.--Except for the matters set out
9 in subsection (a)(6) through (11), nothing in this section shall
10 restrict discussion or testing on matters directly related to
11 course instruction on core academic subjects, other than health,
12 sex education or similar subjects which shall be subject to the
13 informed consent requirement of subsection (a). No student shall
14 be penalized or rewarded in any subject, test or assignment
15 because of the disclosure of any information described in
16 subsection (a).

17 Section 8. Counseling matters.

18 (a) Student initiated contacts.--Nothing in this act shall
19 prohibit or restrict any counseling or advice provided in
20 response to student-initiated contacts with a teacher,
21 counselor, nurse, school administrator or other person
22 authorized by the school entity to provide such advice and
23 counseling.

24 (b) School contacts with parents or guardians.--Nothing in
25 this act shall prohibit or restrict school initiated contacts
26 with the parent or guardian of a student regarding any physical,
27 mental or emotional problem or concern relating to the student.

28 (c) Teacher and administrator contacts with students.--A
29 teacher or school administrator may initiate contacts with a
30 student regarding a physical, mental or emotional problem of the

1 student if the teacher or administrator notifies a parent or
2 guardian of the student within two business days after the
3 contact. The teacher or school administrator is not required to
4 provide such notification to the parent or guardian in cases
5 where a report is made under 23 Pa.C.S. Ch. 63 (relating to
6 child protective services) or where a report is made to law
7 enforcement authorities.

8 Section 9. Religious objections.

9 A parent or guardian has the right to have the student of the
10 parent or guardian excused from specific instruction which
11 conflicts with the religious beliefs of the parent or guardian,
12 upon submission to the school entity of a written request for
13 excusal on the basis of the religious belief.

14 Section 10. School entity procedure for compliance.

15 (a) Disclosure of rights.--Parents and guardians of students
16 shall be given written information about their rights under this
17 act, including the name, telephone number and address of the
18 person in each school district responsible for compliance.

19 (b) Compliance officers.--Each school entity shall designate
20 one person to be responsible to parents and guardians of
21 students to make sure that the rights of students, parents and
22 guardians under this act are protected.

23 (c) Local rules.--Each school entity may adopt reasonable
24 rules and regulations to implement this act, provided they are
25 consistent with the rules and regulations promulgated under
26 section 11.

27 Section 11. Rules and regulations.

28 The Department of Education shall promulgate rules and
29 regulations necessary for the implementation of this act.

30 Section 12. Remedies.

1 (a) Cause of action.--The Attorney General, any aggrieved
2 student, parent or guardian of a student may seek an injunction
3 against any violation of this act from a court with appropriate
4 jurisdiction.

5 (b) Legal advice.--Upon the request of the governing body,
6 superintendent or executive director of an educational entity,
7 the Attorney General shall furnish written legal advice
8 concerning any matter or issue arising in connection with the
9 exercise of the official powers or performance of the official
10 duties of the educational entity under this act:

11 (1) The written advice, if given, shall be followed,
12 and, when followed, the recipient shall not in any way be
13 liable for doing so, upon any official bond or otherwise.

14 (2) If the governing body of the educational entity
15 disagrees with the legal advice rendered by the Attorney
16 General, the educational entity may seek a declaratory
17 judgment in the Commonwealth Court. The legal advice of the
18 Attorney General shall be binding until the Commonwealth
19 Court issues a final order on the petition requesting the
20 declaratory judgment.

21 (3) Any written legal advice given pursuant to this
22 subsection shall be a public record. If the Attorney General
23 deems the legal advice to be of substantial importance to
24 educational entities, parents, guardians and other persons
25 throughout this Commonwealth, the Attorney General may
26 publish such advice in the Pennsylvania Bulletin in the form
27 of an official opinion.

28 (c) No abrogation.--Nothing in this act shall eliminate or
29 abrogate any other legal or equitable remedy which may be
30 available to a student, parent or guardian of a student in

1 connection with a violation of this act.

2 Section 13. Preservation of existing privacy rights.

3 Nothing in this act shall be construed to eliminate or weaken
4 any of the following:

5 (1) A privacy protection, which is accorded by statute
6 or regulation, against the collection of information
7 regarding a student and the student's family or against the
8 release of such information to a party other than the student
9 or a parent or guardian of the student.

10 (2) A right, which is accorded by statute or regulation,
11 of a parent or guardian of a student to have or to have
12 access to information regarding educational activities
13 affecting the student.

14 (3) The legal authority of a parent or guardian of a
15 student regarding the education or rearing of the student.

16 Section 14. Form of consent.

17 (a) Requirements.--When informed consent is required under
18 this act, the consent shall be manifested on a form or paper
19 used solely for the purpose of obtaining consent and providing
20 written notice which contains a reasonable description of:

21 (1) The health care services for which informed consent
22 is sought. This paragraph includes clear and conspicuous
23 notice regarding any health care service which may involve:

24 (i) an examination of the genital area or the
25 removal of undergarments; or

26 (ii) mental or emotional health screening,
27 diagnosis, treatment, counseling or referral.

28 (2) The student record and the purpose for which the
29 student record is sought.

30 (3) The entities or persons who will have access to the

1 student record or provide the health care services in
2 question if informed consent is granted.

3 (b) Additional information.--In addition to the requirements
4 of subsection (a), each form shall contain a statement
5 encouraging the parent or guardian to seek additional
6 information regarding the proposed health care service and
7 providing the name and telephone number of a contact person
8 designated by the school entity for this purpose. This statement
9 shall be at the end of the form directly above the place
10 designated for the signature of the parent or guardian.

11 (c) General consent.--A general consent for the release of
12 or access to student records or for the provision of health care
13 services shall not constitute the informed consent required
14 under this act.

15 (d) Consent for periodic health care services.--Nothing in
16 this act shall require additional consent for each subsequent
17 occasion during the school term on which a health care service
18 is provided to a student if it is clear from the consent form
19 that the health care services specifically described on the form
20 will be provided on a periodic basis. Informed consent under
21 this subsection may be revoked at any time. Under no
22 circumstances shall any informed consent extend beyond the
23 school term for which it is given.

24 Section 15. Effective date.

25 This act shall take effect in 60 days.