

Green Brainard Denny Ahner Storrall

House BILL NO. 369

INTRODUCED BY

Wells Emerson-Simpkins

Justin Orr ORR

McKenzie Leonard Jeff Calkins Joe Hayne Bergman
Kramer Barnett

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING SCHOOL DISTRICT TRUSTEES AND PERSONNEL TO COMPLY WITH PROTECTIONS FOR FAMILY AND STUDENT PRIVACY; REQUIRING THE TRUSTEES OF A SCHOOL DISTRICT TO ADOPT POLICIES REGARDING WRITTEN PARENTAL CONSENT PRIOR TO OBTAINING CERTAIN INFORMATION FROM A STUDENT THAT RELATES TO A STUDENT OR THE STUDENT'S FAMILY; REQUIRING NOTIFICATION OF AND WRITTEN CONSENT FOR STUDENT PARTICIPATION IN A SCHOOL HEALTH EDUCATION PROGRAM; AND PROVIDING AN EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Short title. [Sections 1 through 5] may be cited as the "Montana Family Educational Rights and Privacy Act".

NEW SECTION. Section 2. Definitions. For the purposes of [sections 1 through 5], the following definitions apply:

(1) "Experimental procedure" means an assessment method and validity data based on controlled scientific studies that have not been published in at least two professional peer-reviewed journals.

(2) "Guardian" means the guardian of a minor, as provided in Title 72, chapter 5, part 2.

(3) (a) "Psychological or psychiatric treatment" means an interpersonal interaction with the objective of modifying the perception of or adjustment of a person's attitudes, feelings, values, self-concept, personal adjustments, motives, personality characteristics, or adaptive coping patterns.

(b) The term does not include crisis intervention, which is an emergency action taken in response to a clear and present danger to health or safety.

NEW SECTION. Section 3. Application of federal law to administration and operation of school districts -- trustee policies. (1) The trustees of a school district and school district personnel shall comply with the protection provided for family and student privacy under the federal Family and Educational Rights and Privacy Act of 1974 (20 U.S.C. 1232g), in the administration and operation of all school district

1 programs, regardless of the source of funding for the program.

2 (2) The trustees of a school district shall adopt policies governing the protection of family and
3 student privacy as required by [sections 1 through 5]. At the beginning of each school year, the trustees
4 shall provide each student's parent or guardian with written notification of the provisions of [sections 1
5 through 5] and the school board policies adopted under the provisions of [sections 1 through 5].

6

7 **NEW SECTION. Section 4. Policies on prohibition of testing without prior written consent --**
8 **notification to parents -- validity of consent.** (1) The policies adopted by the trustees of a school district
9 under the provisions of [section 3] must include prohibitions on the administration of any psychological or
10 psychiatric examination, test, or treatment or experimental procedures without the prior written consent
11 of the student's parent or guardian when the purpose is to reveal the following information concerning the
12 student, the student's parent or guardian, or a student's family member:

13 (a) political affiliations or philosophies;

14 (b) mental or psychological problems;

15 (c) sexual behavior, orientation, or attitudes;

16 (d) illegal, antisocial, self-incriminating, or demeaning behavior;

17 (e) critical appraisals of the student or individuals with whom the student or a family member has
18 close family relationships;

19 (f) religious affiliations or beliefs;

20 (g) legally recognized privileged and analogous relationships, such as relationships with lawyers,
21 medical personnel, or ministers; and

22 (h) income, except as required by law.

23 (2) The prohibitions and notification regarding the inquiry or disclosure of information under
24 subsection (1) also apply to:

25 (a) the curriculum and instructional materials, including teachers' manuals, films, tapes, or other
26 supplementary material, that may be used in connection with any survey, analysis, or evaluation or other
27 school activities unless prior written consent of the student's parent or guardian has been obtained; and

28 (b) the taping or electronic recording of a meeting with a student without prior written consent of
29 the parent or guardian.

30 (3) Written parental consent is valid only if a parent or guardian has been first given written notice

1 and a reasonable opportunity to obtain written information concerning:

2 (a) records or information about the inquiry, including information about relationships, that may be
3 examined or requested;

4 (b) the means by which the records or information may be examined or reviewed;

5 (c) the means by which the information is to be obtained;

6 (d) the purpose for which the records or information is needed;

7 (e) the entity or person, regardless of affiliation, who will have access to the personally identifiable
8 information; and

9 (f) a method by which a parent or guardian of a student may grant permission to access or to
10 examine the personally identifiable information.

11 (4) (a) Except in the case of exigent circumstances, disclosure to a parent or guardian must be
12 given at least 2 weeks but not more than 5 months before information protected under [sections 1 through
13 5] is sought.

14 (b) A general consent, including a general consent used to approve admission to or involvement
15 in a special education or remedial program or regular school activity, does not constitute consent under
16 [sections 1 through 5].

17

18 **NEW SECTION. Section 5. Policy regarding health education programs -- parental notification.** The
19 trustees of a district shall adopt a policy under the provisions of [sections 1 through 5] to provide for
20 written consent from a student's parent or guardian prior to the student's participation in a health education
21 program of the district. The policy must include provisions for:

22 (1) written notification to the student's parent or guardian that written consent is required prior
23 to the student's participation in the program; and

24 (2) allowing a parent to review the materials to be used by the student and the teacher in the
25 program.

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27 **NEW SECTION. Section 6. Codification instruction.** [Sections 1 through 5] are intended to be
28 codified as an integral part of Title 20, chapter 5, and the provisions of Title 20 apply to [sections 1 through
29 5].

30

1 NEW SECTION. **Section 7. Effective date.** [This act] is effective July 1, 1995.

2 -END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0369, as introduced

DESCRIPTION OF PROPOSED LEGISLATION: An act requiring school district trustees and personnel to comply with protections for family and student privacy; requiring the trustees of a school district to adopt policies regarding written parental consent prior to obtaining certain information from a student that relates to a student or the student's family; requiring notification of and written consent for student participation in a school health education program;

ASSUMPTIONS:

1. For the majority of school districts, existing board policies and administrative practices provide for an alternative curriculum when students or parents of students choose to "opt-out" of the sexual education component of the health education curriculum or alternative reading/study materials when a student requests alternatives. Unless the student "opts-out," the district educators assume that the student and the student's parents have consented to the student's participation in the curriculum chosen by the local school board.
2. HB 369 requires each school district to provide parents with written notification of the school board's policy governing a) the administration of tests or surveys regarding the personal behavior and beliefs of the student and b) participation in health education programs.
3. Under HB 369, a student will not participate in a health education program or a test/survey regarding personal behavior and beliefs unless the student's parent or guardian "opts in" to the program by providing written consent prior to the student's participation in the program.
4. District administrative costs and staff time will increase under HB 369 due to the distribution and collection of consent forms and the distribution of policies.


FISCAL IMPACT: No impact on state revenues or expenditures.

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

HB 369 will result in increased costs to the district in terms of printing and distribution of board policies and consent forms to the parents of every student. Additional district staff time will be necessary for the collection (including follow-up phone calls) of written consent form.

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

TECHNICAL NOTES:


DAVID LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning


JACK WELLS, PRIMARY SPONSOR DATE

APPROVED BY COM ON EDUCATION
AND CULTURAL RESOURCES

HOUSE BILL NO. 369

INTRODUCED BY WELLS, EMERSON, SIMPKINS, S. SMITH, ORR, GREEN, BRAINARD, DENNY,
AHNER, STOVALL, MCGEE, KEENAN, SOFT, CURTISS, JORE, HAYNE, BERGMAN, DEVANEY,
GRIMES, BARNETT

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING SCHOOL DISTRICT TRUSTEES AND PERSONNEL
TO COMPLY WITH FEDERAL PROTECTIONS FOR FAMILY AND STUDENT PRIVACY AND OTHER STUDENT
RIGHTS; ~~REQUIRING THE TRUSTEES OF A SCHOOL DISTRICT TO ADOPT POLICIES REGARDING WRITTEN
PARENTAL CONSENT PRIOR TO OBTAINING CERTAIN INFORMATION FROM A STUDENT THAT RELATES
TO A STUDENT OR THE STUDENT'S FAMILY; REQUIRING NOTIFICATION OF AND WRITTEN CONSENT
FOR STUDENT PARTICIPATION IN A SCHOOL HEALTH EDUCATION PROGRAM; AND PROVIDING AN
EFFECTIVE DATE.~~"

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Short title.** [Sections 1 through ~~5~~ AND 2] may be cited as the
"Montana Family Educational Rights and Privacy Act".

NEW SECTION. ~~**Section 2. Definitions.**~~ For the purposes of [sections 1 through 5], the following
definitions apply:

(1) ~~"Experimental procedure" means an assessment method and validity data based on controlled
scientific studies that have not been published in at least two professional peer reviewed journals.~~

(2) ~~"Guardian" means the guardian of a minor, as provided in Title 72, chapter 5, part 2.~~

(3) (a) ~~"Psychological or psychiatric treatment" means an interpersonal interaction with the
objective of modifying the perception of or adjustment of a person's attitudes, feelings, values,
self concept, personal adjustments, motives, personality characteristics, or adaptive coping patterns.~~

(b) ~~The term does not include crisis intervention, which is an emergency action taken in response
to a clear and present danger to health or safety.~~

NEW SECTION. **Section 2. Application of federal law to administration and operation of school**

1 **districts -- trustee policies.** (1) The trustees of a school district and school district personnel shall comply
 2 with the protection provided for family and student privacy under the federal Family and Educational Rights
 3 and Privacy Act of 1974 (20 U.S.C. 1232g); AND WITH PROTECTION OF STUDENT RIGHTS IN 20 U.S.C.
 4 1232H in the administration and operation of all school district programs, regardless of the source of
 5 funding for the program.

6 (2) The trustees of a school district shall adopt policies governing the protection of family and
 7 student privacy AND THE PROTECTION OF STUDENT RIGHTS as required by [sections 1 through 5 AND
 8 2]. At the beginning of each school year, the trustees shall provide each student's parent or guardian with
 9 written notification of the provisions of [sections 1 through 5 AND 2] and the school board policies adopted
 10 under the provisions of [sections 1 through 5 AND 2].

11
 12 ~~**NEW SECTION. Section 4. Policies on prohibition of testing without prior written consent --**~~
 13 ~~**notification to parents -- validity of consent.**~~ (1) ~~The policies adopted by the trustees of a school district~~
 14 ~~under the provisions of [section 3] must include prohibitions on the administration of any psychological or~~
 15 ~~psychiatric examination, test, or treatment or experimental procedures without the prior written consent~~
 16 ~~of the student's parent or guardian when the purpose is to reveal the following information concerning the~~
 17 ~~student, the student's parent or guardian, or a student's family member:~~

18 (a) ~~political affiliations or philosophies;~~

19 (b) ~~mental or psychological problems;~~

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22 (e) ~~critical appraisals of the student or individuals with whom the student or a family member has~~
 23 ~~close family relationships;~~

24 (f) ~~religious affiliations or beliefs;~~

25 (g) ~~legally recognized privileged and analogous relationships, such as relationships with lawyers,~~
 26 ~~medical personnel, or ministers; and~~

27 (h) ~~income, except as required by law.~~

28 (2) ~~The prohibitions and notification regarding the inquiry or disclosure of information under~~
 29 ~~subsection (1) also apply to:~~

30 (a) ~~the curriculum and instructional materials, including teachers' manuals, films, tapes, or other~~

1 ~~supplementary material, that may be used in connection with any survey, analysis, or evaluation or other~~
 2 ~~school activities unless prior written consent of the student's parent or guardian has been obtained; and~~

3 ~~(b) the taping or electronic recording of a meeting with a student without prior written consent of~~
 4 ~~the parent or guardian.~~

5 ~~(3) Written parental consent is valid only if a parent or guardian has been first given written notice~~
 6 ~~and a reasonable opportunity to obtain written information concerning:~~

7 ~~(a) records or information about the inquiry, including information about relationships, that may be~~
 8 ~~examined or requested;~~

9 ~~(b) the means by which the records or information may be examined or reviewed;~~

10 ~~(c) the means by which the information is to be obtained;~~

11 ~~(d) the purpose for which the records or information is needed;~~

12 ~~(e) the entity or person, regardless of affiliation, who will have access to the personally identifiable~~
 13 ~~information; and~~

14 ~~(f) a method by which a parent or guardian of a student may grant permission to access or to~~
 15 ~~examine the personally identifiable information.~~

16 ~~(4) (a) Except in the case of exigent circumstances, disclosure to a parent or guardian must be~~
 17 ~~given at least 2 weeks but not more than 5 months before information protected under [sections 1 through~~
 18 ~~5] is sought.~~

19 ~~(b) A general consent, including a general consent used to approve admission to or involvement~~
 20 ~~in a special education or remedial program or regular school activity, does not constitute consent under~~
 21 ~~[sections 1 through 5].~~

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 23 ~~**NEW SECTION. Section 5. Policy regarding health education programs — parental notification.** The~~
 24 ~~trustees of a district shall adopt a policy under the provisions of [sections 1 through 5] to provide for~~
 25 ~~written consent from a student's parent or guardian prior to the student's participation in a health education~~
 26 ~~program of the district. The policy must include provisions for:~~

27 ~~(1) written notification to the student's parent or guardian that written consent is required prior~~
 28 ~~to the student's participation in the program; and~~

29 ~~(2) allowing a parent to review the materials to be used by the student and the teacher in the~~
 30 ~~program.~~

1 NEW SECTION. Section 3. Codification instruction. [Sections 1 ~~through 5~~ AND 2] are intended
2 to be codified as an integral part of Title 20, chapter 5, and the provisions of Title 20 apply to [sections
3 1 ~~through 5~~ AND 2].

4

5 NEW SECTION. Section 4. Effective date. [This act] is effective July 1, 1995.

6

-END-