23.0421.03003

Sixty-eighth
Legislative Assembly
of North Dakota

SENATE BILL NO. 2260

Introduced by

Senators Paulson, Lemm, Wobbema

Representatives Dyk, Heilman, Novak

A BILL for an Act to create and enact a new section to chapter 14-09, a new section to chapter 15.1-09, and a new section to chapter 23-12 of the North Dakota Century Code, relating to fundamental parental rights, parental involvement in education, and parental right to consent to medical treatment of the parent's child.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 14-09 of the North Dakota Century Code is created and enacted as follows:

Parental rights and responsibilities - Fundamental rights.

1. As used in this section, unless the context otherwise requires:
   a. "Child" means an individual under the age of eighteen.
   b. "Parent" means a biological parent of a child, an adoptive parent of a child, or an individual who has been granted exclusive right and authority over the welfare of a child under state law.
2. This state, any political subdivision, or any other governmental entity may not substantially burden the fundamental right of a parent to direct the upbringing, education, health care, and mental health of that parent's child without demonstrating that the burden is required by a compelling governmental interest of the highest order as applied to the parent and the child and is the least restrictive means of furthering that compelling governmental interest.
3. Parental rights are reserved exclusively to a parent of a child without obstruction by or interference from the state, a political subdivision, a governmental entity, or other institution, including the right to:

a. Direct the education of the child, including the right to choose public, private, parochial, or home schooling, and the right to make reasonable choices within a public school for the education of the child.

b. Access and review a written or electronic educational record relating to the child which is controlled by or in the possession of a school.

c. Direct the upbringing of the child.

d. Direct the moral or religious training of the child.

e. Make and consent ~~in writing~~ to a physical or mental health care decision for the child as required under section 3 of this Act.

f. Access and review a health or medical record of the child.

g. Consent in writing before a biometric scan of the child is made, shared, or stored.

h. Consent in writing before a record of the child's blood or deoxyribonucleic acid is created, stored, or shared, unless authorized pursuant to a court order.

i. Consent in writing before any governmental entity makes a video or voice recording of the child, unless the video or voice recording is made during or as a part of:

(1) A court proceeding;

(2) A law enforcement investigation;

(3) A forensic interview in a criminal or department of health and human services investigation; or

(4) The security or surveillance of buildings or grounds.

j. Be notified promptly ~~if an employee~~by an authorized representative of the state, a political subdivision, a governmental entity, or other institution if an employee of the entity or institution suspects abuse, neglect, or a criminal offense has been committed against the child, unless the employee has reasonable cause to believe the parent committed the offense.

k. Opt the child out of any personal analysis, evaluation, survey, or data collection by a school district which would capture data except what is necessary to establish a student's educational record.

l. Have the child excused from school attendance for religious purposes.

m. Participate in parent-teacher associations and school organizations.

4. This section does not authorize or allow a parent to abuse or neglect a child as provided under sections 14-09-22 and 14-09-22.1.

5. This section does not:

   a. Apply to a parental action or decision that would end life.

   b. Prohibit a court from issuing an order that is otherwise permitted by law.

6. An employee of the state, a political subdivision, or a governmental entity, except for law enforcement personnel, may not encourage or coerce a child to withhold information from the child's parent and may not withhold information that is relevant to the physical, emotional, or mental health of the child from a child's parent.

7. A parent may bring suit for a violation of this section and may raise the section as a defense in a judicial or administrative proceeding whether the proceeding is brought by or in the name of the state, a private person, or other party. A person that successfully asserts a claim or defense under this chapter may recover declaratory relief, injunctive relief, compensatory damages, reasonable attorney's fees and costs, and other appropriate relief, unless the claim is asserted against a government employee. Equitable relief is the only remedy available for a claim against a government employee.

SECTION 2. A new section to chapter 15.1-09 of the North Dakota Century Code is created and enacted as follows:

Parental involvement.

1. As used in this section, unless the context otherwise requires:

   a. "Child" means an individual under the age of eighteen.

   b. "Curriculum" includes textbooks; reading materials; handouts; videos; presentations; digital materials; websites; online applications; digital applications for a phone, laptop, or tablet; questionnaires; surveys; or other written or electronic materials that have been or will be assigned, distributed, or otherwise presented physically or virtually to students in a class or course.

   c. "Educational records" includes attendance records, test scores of school-administered tests and statewide assessments, grades, extracurricular activity or club participation, electronic mail accounts, online or virtual accounts or data, disciplinary records, counseling records, psychological records, applications for

admission, health and immunization information including any medical records, teacher and counselor evaluations, and reports of behavioral patterns.

d. "Parent" means a biological parent of a child, an adoptive parent of a child, or an individual who has been granted exclusive right and authority over the welfare of a child under state law.

e. "Teacher training materials" means materials used for professional development, including a presentation, video, or written or electronic materials used or distributed for a training activity.

2. The board of a school district, in consultation with parents, teachers, and administrators, shall develop and adopt a policy to promote the involvement of parents of children enrolled in the school district, including:

a. A plan for parent participation designed to improve parent and teacher cooperation in areas including homework, attendance, and discipline;

b. Procedures to inform a parent about the course of study for that parent's child and review curriculum. These procedures shall allow a parent to:

(1) Review the syllabus, curriculum, and teacher training materials for each class or course that a parent's child is enrolled in at least seven days before the start of each class or course. The syllabus shall include a written description of all topics and subjects taught in a class or course, a list of all curriculum used in the class or course, the identity of all individuals providing in-person or live remote instruction in the class or course, and a description of any assemblies, guest lectures, field trips, or other educational activities that are part of the class or course;

(2) Review, copy, and record all curriculum for each class or course offered by the school and any teacher training materials at least three days before use of the curriculum or teacher training materials; and

(3) Meet with the teacher of the class or course, the principal, or other representative from the school to discuss the curriculum and teacher training materials.

c. Procedures to notify a parent at least three days in advance and obtain the parent's written consent before the parent's child attends any instruction or

presentation that relates to gender roles or stereotypes, gender identity, gender expression, sexual orientation, or romantic or sexual relationships;

d. Procedures for a parent to object to a specific presentation or instruction on the basis the presentation or instruction is harmful and to withdraw that parent's child from the presentation or instruction. A parent may object to a specific presentation or instruction that questions beliefs or practices regarding sex, morality, or religion based on harmfulness;

e. A procedure to inform a parent about the nature and purpose of clubs and extracurricular activities approved by the school and a procedure to withdraw that parent's child from a club or extracurricular activity;

f. Procedures requiring parental written consent before a child uses a name or nickname other than the child's legal name, or before a child uses a pronoun that does not align with the child's sex. Notwithstanding parental consent, a school may not require an individual to use pronouns that do not align with the child's sex; and

g. Procedures by which a parent may learn about parental rights and responsibilities under the laws of this state.

3. The board of a school district may adopt a policy to publish the information required by this section in an electronic form.

4. A parent shall submit a written or electronic request for information pursuant to this section to the school principal or the superintendent of the school district. Within ten days of receiving the request for information, the school principal or the superintendent shall deliver the requested information or a written explanation of the reasons for the denial of the requested information to the parent. If the request for information is denied or the parent does not receive the requested information within the allotted time, the parent may submit a written request for the information to the board of the school district, which shall consider the request during executive session at the next meeting of the board.

5. A parent may bring suit for a violation of this section and may raise the section as a defense in a judicial or administrative proceeding whether the proceeding is brought by or in the name of the state, a private person, or other party. A person that

successfully asserts a claim or defense under this chapter may recover declaratory relief, injunctive relief, compensatory damages, reasonable attorney's fees and costs, and other appropriate relief.

SECTION 3. A new section to chapter 23-12 of the North Dakota Century Code is created and enacted as follows:

Parental consent.

1. As used in this section, unless the context otherwise requires:
   a. "Child" means an individual under the age of eighteen.
   b. "Parent" means a biological parent of a child, an adoptive parent of a child, or an individual who has been granted exclusive right and authority over the welfare of a child under state law.
2. Except as otherwise provided by law or court order, an individual, corporation, association, organization, state-supported institution, or individual employed by any of these entities shall obtain the consent of a parent of a child before taking any of the following actions:
   a. Procuring, soliciting to perform, arranging for the performance of, providing a referral for, or performing a surgical procedure on a child;
   b. Procuring, soliciting to perform, arranging for the performance of, providing a referral for, or performing a physical examination of a child;
   c. Prescribing or dispensing a medication or prescription drug to a child; or
   d. Procuring, soliciting to perform, arranging for the performance of, providing a referral for, or performing a mental health evaluation or mental health treatment on a child.
3. If the parental consent pursuant to subsection 2 is given through telemedicine, the individual or entity obtaining parental consent must verify the identity of the parent at the site where the consent is given.
4. This section does not apply when it has been determined by a physician that:
   a. An emergency exists; and
   b. Either of the following conditions is true:
      (1) It is necessary to perform an activity listed in subsection 1 to prevent death or imminent, irreparable physical injury to the child, or

(2) The individual or entity obtaining parental consent cannot locate or contact the parent of the child after a reasonably diligent effort.

5. This section does not apply to ~~an~~:

a. An abortion, which is governed by section 14-02.1-03.1;

b. The treatment of a sexually transmitted disease or substance use disorder under section 14-10-17;

c. Emergency care of a minor under section 14-10-17.1;

d. Blood donation under section 14-10-18.1;

e. Prenatal care and other pregnancy care services under section 14-10-19; or

f. Health care for an unaccompanied homeless minor under section 14-10-20.

6. A parent may bring suit for a violation of this section and may raise this section as a defense in a judicial or administrative proceeding whether the proceeding is brought by or in the name of the state or other person. A person that successfully asserts a claim or defense under this chapter may recover declaratory relief, injunctive relief, compensatory damages, reasonable attorney's fees and costs, and other appropriate relief.