

By: Nunnelee

To: Education

## SENATE BILL NO. 2747

1 AN ACT ENTITLED THE "STUDENT AND FAMILY PRIVACY PROTECTION  
2 ACT" TO REQUIRE SCHOOLS TO OBTAIN WRITTEN CONSENT FROM FAMILIES  
3 BEFORE RELEASING STUDENT RECORDS AND PROHIBITING THE USE OF SOCIAL  
4 SECURITY NUMBERS TO IDENTIFY STUDENTS; TO PROHIBIT SCHOOLS FROM  
5 CONDUCTING CERTAIN SURVEYS; TO ALLOW PARENTS TO INSPECT  
6 INSTRUCTIONAL MATERIALS USED IN THEIR CHILDREN'S CLASSROOMS; TO  
7 PROHIBIT SCHOOL PERSONNEL OR HEALTH CARE PROVIDERS FROM USING  
8 SCHOOL FACILITIES FOR ADMINISTERING NONEMERGENCY HEALTH SERVICES  
9 WITHOUT THE INFORMED CONSENT OF THE PARENT OR GUARDIAN; AND FOR  
10 RELATED PURPOSES.

11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

12 SECTION 1. This act shall be known and may be cited as the  
13 "Student and Family Privacy and Protection Act."

14 SECTION 2. The purpose of this act is to require informed  
15 consent for the provision of school health care services, with  
16 limited exceptions as outlined by this act, and to protect the  
17 privacy of students and their families, and to protect against the  
18 inappropriate collection and release of student educational  
19 records or student records.

20 SECTION 3. The following words and phrases when used in this  
21 act shall have the meanings given to them in this section unless  
22 the context clearly indicates otherwise:

23 (a) "Directory information" means a student's name,  
24 age, municipality of residence, participation in officially  
25 recognized activities and sports, including weight and height when  
26 the student is a member of an athletic team, and any awards,  
27 certificates and diplomas received by the student.

28 (b) "Educational entity" means the State Department of  
29 Education, the State Board of Education, a local school district,  
30 a vocational-technical school, an intermediate unit and any of

31 their officers, employees or persons acting as their agents.

32 (c) "Health care services" means an examination,  
33 screening, diagnosis, evaluation or treatment for physical, mental  
34 or emotional health problems. The term includes screening,  
35 counseling and referrals for behavioral, social or emotional  
36 problems by school support team programs, student assistance  
37 programs and similar programs and referrals to and by such  
38 programs.

39 (d) "Informed consent" means the signature of a parent  
40 or guardian of a student giving prior written consent on the form  
41 required by Section 14 to the release or inspection of a student  
42 record or the provision of health care services to the student.  
43 For a student who is a high school graduate, is married or is  
44 nineteen (19) years of age or older, the term means the signature  
45 of the student rather than the signature of the parent or guardian  
46 of the student.

47 (e) "Instructional materials" means all materials to  
48 which a student shall or may be directly exposed, including, but  
49 not limited to textbooks, materials in the school library  
50 accessible to students, videos, films, tapes, computer discs,  
51 charts or graphs.

52 (f) "Medical emergency" means a condition in which  
53 immediate medical care is necessary to prevent the death or  
54 serious impairment of the health of a student.

55 (g) "Parent" means a biological or adoptive parent who  
56 has legal custody of a student.

57 (h) "Person" means an individual, corporation,  
58 partnership, limited liability company, business trust, other  
59 association, government entity, estate, trust or foundation.

60 (i) "Requirement of federal law" means any specific  
61 mandate imposed by any federal statute, regulation, court order or  
62 consent decree. This term also includes any conditions required  
63 in order to participate in the federal Medicaid program and the  
64 federal special education program provided for under the  
65 Individuals with Disabilities Education Act (Public Law 91-230, 20  
66 USCS, Section 1400 et seq.).

67 (j) "Student" means a person who is enrolled in a

68 school district or who becomes subject to the protections accorded  
69 under this act by reason of past enrollment in a school district.

70 (k) "Student educational record" means the permanent  
71 record or file of a student which may be in the form of an  
72 electronic portfolio, including, but not limited to, personal  
73 achievement or credit for courses taken, grades, attendance, any  
74 graduation project, any disciplinary or behavioral record or  
75 information and any other record or information relating to the  
76 overall performance of that particular student in regard to the  
77 academic educational program, including any other record, other  
78 than a student medical record directly related to the student.

79 (l) "Student record" means a student educational record  
80 or a student medical record.

81 SECTION 4. (1) Except for directory information, no  
82 educational entity shall release or allow access to any student  
83 record or any personal or private information relating to  
84 personally identifiable information on the student or family of  
85 the student.

86 (2) Nothing in this act shall prohibit an educational entity  
87 from permitting access to or releasing any student record or any  
88 personal or private information on the student or family to any of  
89 the following persons or under the following circumstances:

90 (a) To law enforcement officials in the course of a  
91 criminal investigation.

92 (b) To a court of competent jurisdiction pursuant to a  
93 court order or subpoena.

94 (c) To a parent or guardian of the student or to the  
95 student if such student is a high school graduate, is married or  
96 is nineteen (19) years of age or older. Under this paragraph, a  
97 student may not authorize the release of personal or private  
98 information of a derogatory nature on any other living family  
99 member without the written consent of that family member.

100 (d) To any person authorized to receive such

101 information pursuant to the informed written consent of the  
102 parent, guardian of the student or the student whose records are  
103 sought if such student is eighteen (18) years of age or older and  
104 is emancipated.

105 (e) Where the release of such information is necessary  
106 to protect the immediate health or safety of the student, provided  
107 the parent or guardian of the student is given written  
108 notification of such release within two (2) business days  
109 thereafter.

110 (f) State or local officials or authorities to whom  
111 such information must be reported or disclosed pursuant to Section  
112 43-21-353, Mississippi Code of 1972 (relating to child protective  
113 services) or any other statutory law.

114 (g) Where the release of the information is a  
115 requirement of federal law as certified by the Attorney General.

116 (h) Employees or officers of the school district within  
117 which the student is enrolled who have a legitimate interest in  
118 access to such records.

119 (i) Employees or officers of the school district in  
120 which the student transfers or seeks to enroll.

121 (3) Except where required under federal law, no social  
122 security number may be used as a personal identifier for a student  
123 record. No educational entity shall request or require the social  
124 security number of a student be disclosed as a condition of  
125 admission to any school district or for any other reason.

126 SECTION 5. (1) No local school district shall permit its  
127 school personnel or any public or private providers of health care  
128 services to utilize facilities or resources of the school district  
129 for the purpose of providing health care services to students,  
130 unless the informed consent required by this act for the  
131 provisions of health services has been obtained on the form under  
132 Section 14.

133 (2) Subsection (1) shall be inapplicable to any of the

134 following:

135 (a) Medical emergencies.

136 (b) A requirement of federal law as certified by the  
137 Attorney General, including individual education plans and other  
138 requirements prescribed for special education students under the  
139 Individuals with Disabilities Education Act (Public Law 91-230, 20  
140 USCS, Section 1400 et seq.).

141 (c) Ordinary and reasonable discipline as defined under  
142 school policy or that which is necessary to maintain safety or  
143 school order.

144 (3) Nothing in this act shall be deemed to expand any legal  
145 authority to utilize the resources, personnel or facilities of any  
146 local school district to provide health care services.

147 SECTION 6. A parent or guardian of the student shall, upon  
148 the making of a written request, be entitled to inspect all  
149 instructional materials and teacher manuals, other than test  
150 questions or examination materials that are used in connection  
151 with any course or program taught at the school district within  
152 two (2) business days after the parent or guardian makes a request  
153 to inspect such materials. Each local school district shall  
154 establish a reasonable procedure for implementing this section.

155 SECTION 7. (1) No local school district shall require or  
156 permit a student to participate in any survey, questionnaire,  
157 analysis or evaluation that would require or provide for the  
158 disclosure of the following information on the student without  
159 first obtaining the informed consent required under this act:

160 (a) Personal values, attitudes, opinions or beliefs.

161 (b) Family members' values, attitudes, opinions or  
162 beliefs.

163 (c) Religious affiliations or beliefs.

164 (d) Political affiliations or beliefs.

165 (e) Sexual attitudes or beliefs.

166 (f) Sexual behavior.

167 (g) Illegal, anti-social or self-incriminating or  
168 demeaning behavior.

169 (h) Critical appraisals of individuals with whom the  
170 student has personal relationships.

171 (i) The disclosure of information protected by legally  
172 recognized privileged and analogous relationships, such as those  
173 of attorneys, medical personnel or ministers.

174 (j) Income, other than required by law to determine  
175 eligibility for participation in a program for financial  
176 assistance.

177 (k) Mental and psychological problems potentially  
178 embarrassing to the student or the student's family.

179 (2) Except for the matters set out in subsection (1)(f)  
180 through (k), nothing in this section shall restrict discussion or  
181 testing on matters directly related to course instruction on core  
182 academic subjects, other than health, sex education or similar  
183 subjects which shall be subject to the informed consent  
184 requirement of subsection (1). No student shall be penalized or  
185 rewarded in any subject, test or assignment because of the  
186 disclosure of any information described in subsection (1).

187 SECTION 8. (1) Nothing in this act shall prohibit or  
188 restrict any counseling or advice provided in response to  
189 student-initiated contacts with a teacher, counselor, nurse,  
190 school administrator or other person authorized by the school  
191 district to provide such advice and counseling.

192 (2) Nothing in this act shall prohibit or restrict  
193 school-initiated contacts with the parent or guardian of a student  
194 regarding any physical, mental or emotional problem or concern  
195 relating to the student.

196 (3) A teacher or school administrator may initiate contacts  
197 with a student regarding a physical, mental or emotional problem  
198 of the student if the teacher or administrator notifies a parent  
199 or guardian of the student within two (2) business days after the

200 contact. The teacher or school administrator is not required to  
201 provide such notification to the parent or guardian in cases where  
202 a report is made under Section 43-21-353, Mississippi Code of  
203 1972, (relating to child protective services) or where a report is  
204 made to law enforcement authorities.

205 SECTION 9. A parent or guardian has the right to have the  
206 student of the parent or guardian excused from specific  
207 instruction which conflicts with the religious beliefs of the  
208 parent or guardian, upon submission to the school district of a  
209 written request for excusal on the basis of the religious belief.

210 SECTION 10. (1) Parents and guardians of students shall be  
211 given written information about their rights under this act,  
212 including the name, telephone number and address of the person in  
213 each school district responsible for compliance.

214 (2) Each local school district shall designate one (1)  
215 person to be responsible to parents and guardians of students to  
216 make sure that the rights of students, parents and guardians under  
217 this act are protected.

218 (3) Each local school district may adopt reasonable rules  
219 and regulations to implement this act, provided they are  
220 consistent with the rules and regulations promulgated under  
221 Section 11.

222 SECTION 11. The State Department of Education shall  
223 promulgate rules and regulations necessary for the implementation  
224 of this act.

225 SECTION 12. (1) The Attorney General, any aggrieved  
226 student, parent or guardian of a student may seek an injunction  
227 against any violation of this act from a court with appropriate  
228 jurisdiction.

229 (2) Upon the request of the governing body, superintendent  
230 or executive director of an educational entity, the Attorney  
231 General shall furnish written legal advice concerning any matter  
232 or issue arising in connection with the exercise of the official

233 powers or performance of the official duties of the educational  
234 entity under this act:

235           (a) The written advice, if given, shall be followed,  
236 and, when followed, the recipient shall not in any way be liable  
237 for doing so, upon any official bond or otherwise.

238           (b) If the governing body of the educational entity  
239 disagrees with the legal advice rendered by the Attorney General,  
240 the educational entity may seek a declaratory judgment in the  
241 circuit court. The legal advice of the Attorney General shall be  
242 binding until the circuit court issues a final order on the  
243 petition requesting the declaratory judgment.

244           (c) Any written legal advice given pursuant to this  
245 subsection shall be a public record. If the Attorney General  
246 deems the legal advice to be of substantial importance to  
247 educational entities, parents, guardians and other persons  
248 throughout this state, the Attorney General may publish such  
249 advice in the form of an official opinion.

250           (3) Nothing in this act shall eliminate or abrogate any  
251 other legal or equitable remedy which may be available to a  
252 student, parent or guardian of a student in connection with a  
253 violation of this act.

254           SECTION 13. Nothing in this act shall be construed to  
255 eliminate or weaken any of the following:

256           (a) A privacy protection, which is accorded by statute  
257 or regulation, against the collection of information regarding a  
258 student and the student's family or against the release of such  
259 information to a party other than the student or a parent or  
260 guardian of the student.

261           (b) A right, which is accorded by statute or  
262 regulation, of a parent or guardian of a student to have or to  
263 have access to information regarding educational activities  
264 affecting the student.

265           (c) The legal authority of a parent or guardian of a



266 student regarding the education or rearing of the student.

267 SECTION 14. (1) When informed consent is required under  
268 this act, the consent shall be manifested on a form or paper used  
269 solely for the purpose of obtaining consent and providing written  
270 notice which contains a reasonable description of:

271 (a) The health care services for which informed consent  
272 is sought. This paragraph includes clear and conspicuous notice  
273 regarding any health care service which may involve:

274 (i) An examination of the genital area or the  
275 removal of undergarments; or

276 (ii) Mental or emotional health screening,  
277 diagnosis, treatment, counseling or referral.

278 (b) The student record and the purpose for which the  
279 student record is sought.

280 (c) The entities or persons who will have access to the  
281 student record or provide the health care services in question if  
282 informed consent is granted.

283 (2) In addition to the requirements of subsection (1), each  
284 form shall contain a statement encouraging the parent or guardian  
285 to seek additional information regarding the proposed health care  
286 service and providing the name and telephone number of a contact  
287 person designated by the school district for this purpose. This  
288 statement shall be at the end of the form directly above the place  
289 designated for the signature of the parent or guardian.

290 (3) A general consent for the release of or access to  
291 student records or for the provision of health care services shall  
292 not constitute the informed consent required under this act.

293 (4) Nothing in this act shall require additional consent for  
294 each subsequent occasion during the school term on which a health  
295 care service is provided to a student if it is clear from the  
296 consent form that the health care services specifically described  
297 on the form will be provided on a periodic basis. Informed  
298 consent under this subsection may be revoked at any time. Under

299 no circumstances shall any informed consent extend beyond the  
300 school term for which it is given.

301 SECTION 15. This act shall take effect and be in force from  
302 and after July 1, 2000.