SENATE BILL NO. 2210

AN ACT ENTITLED THE "STUDENT AND FAMILY PRIVACY PROTECTION ACT"; TO REQUIRE SCHOOLS TO OBTAIN WRITTEN CONSENT FROM FAMILIES BEFORE RELEASING STUDENT RECORDS; TO PROHIBIT SCHOOLS FROM CONDUCTING CERTAIN SURVEYS; TO ALLOW PARENTS TO INSPECT INSTRUCTIONAL MATERIALS USED IN THEIR CHILDREN'S CLASSROOMS; TO PROHIBIT SCHOOL PERSONNEL OR HEALTH CARE PROVIDERS FROM USING SCHOOL FACILITIES FOR ADMINISTERING NONEMERGENCY HEALTH SERVICES WITHOUT THE INFORMED CONSENT OF THE PARENT OR GUARDIAN; AND FOR RELATED PURPOSES.

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

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

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

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

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

(b) "Educational entity" means the State Department of Education, the State Board of Education, a local school district, a vocational-technical school, an intermediate unit and any of their officers, employees or persons acting as their agents.
(c) "Health care services" means an examination, screening, diagnosis, evaluation or treatment for physical, mental or emotional health problems. The term includes screening, counseling and referrals for behavioral, social or emotional problems by school support team programs, student assistance programs and similar programs and referrals to and by such programs.

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

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

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

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

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

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

(j) "Student" means a person who is enrolled in a
school district or who becomes subject to the protections accorded
under this act by reason of past enrollment in a school district.

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

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

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

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

(a) To law enforcement officials in the course of a
criminal investigation;

(b) To a court of competent jurisdiction pursuant to a
court order or subpoena;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) Personal values, attitudes, opinions or beliefs.
(b) Family members' values, attitudes, opinions or beliefs.
(c) Religious affiliations or beliefs;
(d) Political affiliations or beliefs.
(e) Sexual attitudes or beliefs;
(f) Sexual behavior;
(g) Illegal, antisocial or self-incriminating or demeaning behavior;
(h) Critical appraisals of individuals with whom the student has personal relationships;

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

(j) Income, other than required by law to determine eligibility for participation in a program for financial assistance; or

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

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

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

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

(3) A teacher or school administrator may initiate contacts with a student regarding a physical, mental or emotional problem of the student if the teacher or administrator notifies a parent or guardian of the student within two (2) business days after the contact. The teacher or school administrator is not required to provide such notification to the parent or guardian in cases where
a report is made under Section 43-21-353, Mississippi Code of 1972, (relating to child protective services) or where a report is made to law enforcement authorities.

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

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

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

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

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

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

(2) Upon the request of the governing body, superintendent or executive director of an educational entity, the Attorney General shall furnish written legal advice concerning any matter or issue arising in connection with the exercise of the official powers or performance of the official duties of the educational entity under this act:
(a) The written advice, if given, shall be followed, and, when followed, the recipient shall not in any way be liable for doing so, upon any official bond or otherwise.

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

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

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

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

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

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

(c) The legal authority of a parent or guardian of a student regarding the education or rearing of the student.
SECTION 14. (1) When informed consent is required under this act, the consent shall be manifested on a form or paper used solely for the purpose of obtaining consent and providing written notice which contains a reasonable description of:

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

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

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

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

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

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

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

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

SECTION 15. This act shall take effect and be in force from
and after July 1, 2003.