

By: Senator(s) Nunnelee

To: Education

SENATE BILL NO. 2101

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; TO PROHIBIT SCHOOLS FROM  
 4 CONDUCTING CERTAIN SURVEYS; TO ALLOW PARENTS TO INSPECT  
 5 INSTRUCTIONAL MATERIALS USED IN THEIR CHILDREN'S CLASSROOMS; TO  
 6 PROHIBIT SCHOOL PERSONNEL OR HEALTH CARE PROVIDERS FROM USING  
 7 SCHOOL FACILITIES FOR ADMINISTERING NONEMERGENCY HEALTH SERVICES  
 8 WITHOUT THE INFORMED CONSENT OF THE PARENT OR GUARDIAN; AND FOR  
 9 RELATED PURPOSES.

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

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

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

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

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

27 (b) "Educational entity" means the State Department of  
 28 Education, the State Board of Education, a local school district,  
 29 a vocational-technical school, an intermediate unit and any of  
 30 their officers, employees or persons acting as their agents.



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

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

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

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

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

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

59 (i) "Requirement of federal law" means any specific  
60 mandate imposed by any federal statute, regulation, court order or  
61 consent decree. This term also includes any conditions required  
62 in order to participate in the federal Medicaid program and the  
63 federal special education program provided for under the



64 Individuals with Disabilities Education Act (Public Law 91-230, 20  
65 USCS, Section 1400 et seq.).

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

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

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

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

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

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

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

93 (c) To a parent or guardian of the student or to the  
94 student if such student is a high school graduate, is married or  
95 is nineteen (19) years of age or older. Under this paragraph, a  
96 student may not authorize the release of personal or private



97 information of a derogatory nature on any other living family  
98 member without the written consent of that family member.

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

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

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

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

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

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

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

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

129 (a) Medical emergencies.



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

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

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

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

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

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

155 (b) Family members' values, attitudes, opinions or  
156 beliefs.

157 (c) Religious affiliations or beliefs.

158 (d) Political affiliations or beliefs.

159 (e) Sexual attitudes or beliefs.

160 (f) Sexual behavior.

161 (g) Illegal, anti-social or self-incriminating or  
162 demeaning behavior.



163 (h) Critical appraisals of individuals with whom the  
164 student has personal relationships.

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

168 (j) Income, other than required by law to determine  
169 eligibility for participation in a program for financial  
170 assistance.

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

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

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

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

190 (3) A teacher or school administrator may initiate contacts  
191 with a student regarding a physical, mental or emotional problem  
192 of the student if the teacher or administrator notifies a parent  
193 or guardian of the student within two (2) business days after the  
194 contact. The teacher or school administrator is not required to  
195 provide such notification to the parent or guardian in cases where



196 a report is made under Section 43-21-353, Mississippi Code of  
197 1972, (relating to child protective services) or where a report is  
198 made to law enforcement authorities.

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

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

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

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

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

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

223 (2) Upon the request of the governing body, superintendent  
224 or executive director of an educational entity, the Attorney  
225 General shall furnish written legal advice concerning any matter  
226 or issue arising in connection with the exercise of the official  
227 powers or performance of the official duties of the educational  
228 entity under this act:



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

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

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

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

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

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

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

259 (c) The legal authority of a parent or guardian of a  
260 student regarding the education or rearing of the student.





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

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

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

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

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

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

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

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

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



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

295         **SECTION 15.** This act shall take effect and be in force from  
296 and after July 1, 2002.

