

By: Senator(s) Nunnelee

To: Education

SENATE BILL NO. 2113

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 meaning 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; or

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.); or

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, antisocial, 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; or

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, and any parent or guardian of an aggrieved student may
221 seek an injunction against any violation of this act from a court
222 with appropriate 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, 2005.