

SENATE BILL NO. 518

INTRODUCED BY T. MANZELLA, C. HINKLE, B. BROWN, J. FULLER, K. REGIER, S. HINEBAUCH, B. USHER, M. NOLAND, D. LENZ, G. HERTZ, C. GLIMM, B. PHALEN, B. BEARD, S. VANCE, F. MANDEVILLE

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS INVOLVING PARENTAL RIGHTS; PROVIDING FOR PARENT INVOLVEMENT IN EDUCATION; PROVIDING THAT PARENTS MAY WITHDRAW THEIR CHILD FROM CERTAIN SCHOOL INSTRUCTION, INCLUDING FOR RELIGIOUS PURPOSES; ESTABLISHING ADDITIONAL PARENTAL RIGHTS AND RESPONSIBILITIES; PROVIDING THAT, WITH CERTAIN EXCEPTIONS, EMPLOYEES OF GOVERNMENTAL ENTITIES ARE PROHIBITED FROM WITHHOLDING CERTAIN INFORMATION FROM PARENTS; PROVIDING REMEDIES FOR VIOLATIONS; INCREASING A FILING FEE; PROVIDING DEFINITIONS; AMENDING SECTIONS 20-5-103, 25-1-202, AND 40-6-701, MCA; AND PROVIDING AN EFFECTIVE DATE."

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

NEW SECTION. Section 1. Parental involvement in education. (1) The board of trustees 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 in the school district, which must be designed to improve parent and teacher cooperation in homework, attendance, and discipline;

(b) procedures by which a parent may learn about the course of study for the parent's child;

(c) procedures by which a parent may withdraw the parent's child from instruction or presentations, assemblies, guest lectures, or other educational events facilitated by a school's faculty or staff, including those conducted by outside individuals or organizations, that offend the parent's beliefs or practices;

(d) procedures by which a parent may learn about the nature and purpose of clubs and extracurricular activities that have been approved by the school or that the school is required to allow under the provisions of the federal Equal Access Act of 1984 and may withdraw the parent's child from any club or extracurricular activity. A student shall provide a signed parental permission form prior to participating in any

1 school-sponsored club or extracurricular activity.

2 (e) procedures by which a parent shall provide written consent before the parent's child uses a
3 name or nickname other than the child's legal name or before the parent's child uses a pronoun that does not
4 align with the child's sex. If a parent provides written consent under this subsection (1)(e), a person may not be
5 compelled to use pronouns that do not align with the child's sex.

6 (f) procedures by which a parent may learn about parental rights and responsibilities under the
7 laws of this state.

8 (2) The board of trustees of a school district may adopt a policy providing that parents may submit
9 and receive the information required by this section in electronic form.

10

11 **NEW SECTION. Section 2. Construction.** (1) Unless parental rights have been legally waived or
12 legally terminated, parents have inalienable rights that are more comprehensive than those described in 40-6-
13 701 or [section 1]. The protections afforded by 40-6-701 and [section 1] are in addition to the protections
14 provided under federal law, other state laws, the United States constitution, and the Montana constitution.

15 (2) Section 40-6-701 and [section 1] must be construed in favor of a broad protection of the
16 fundamental right of parents to direct the upbringing, education, health care, and mental health of their child.

17 (3) Nothing in 40-6-701 or [section 1] may be construed to authorize a governmental entity to
18 burden the fundamental right of parents to direct the upbringing, education, health care, and mental health of
19 their child.

20 (4) If a child has no affirmative right of access to a particular medical or mental health procedure or
21 service, then nothing in 40-6-701 or [section 1] may be construed to grant the child's parent an affirmative right
22 of access to the procedure or service on the child's behalf.

23

24 **Section 3.** Section 20-5-103, MCA, is amended to read:

25 **"20-5-103. Compulsory attendance and excuses.** (1) Except as provided in subsection (2), ~~any a~~
26 parent, guardian, or other person who is responsible for the care of any child who is 7 years of age or older
27 prior to the first day of school in any school fiscal year shall ~~cause~~ ensure the child ~~to attend~~ attends the school
28 in which the child is enrolled for the school term and each school day in the term prescribed by the trustees of

1 the district until the later of the following dates:

2 (a) the child's 16th birthday; or

3 (b) the date of completion of the work of the the child completes 8th grade.

4 (2) The provisions of subsection (1) do not apply in the following cases:

5 (a) The child has been excused under one of the conditions specified in 20-5-102.

6 (b) The child is absent because of illness, bereavement, or other reason prescribed by the policies
7 of the trustees.

8 (c) The child has been suspended or expelled under the provisions of 20-5-202.

9 (d) The child is excused pursuant to 20-7-120.

10 (e) The child is excused pursuant to 40-6-701(2)(l) or [section 1(1)(c)]."

11

12 **Section 4.** Section 25-1-202, MCA, is amended to read:

13 **"25-1-202. Additional filing fees.** (1) In addition to other filing fees, the following fees must be paid to
14 the clerk of the district court at the time of filing a civil action in the district court:

15 (a) a fee of \$20; and

16 (b) if the action is brought pursuant to 40-6-701, in addition to the fee required under subsection
17 (1)(a), a fee of ~~\$5~~ \$6.

18 (2) The fees must be forwarded by the clerk to the department of revenue for deposit in the state
19 general fund. The prevailing party may have the amount paid by the prevailing party taxed in the bill of costs as
20 proper disbursements."

21

22 **Section 5.** Section 40-6-701, MCA, is amended to read:

23 **"40-6-701. Interference with fundamental parental rights restricted -- cause of action.** (1) A
24 governmental entity may not interfere with the fundamental right of parents to direct the upbringing, education,
25 health care, and mental health of their children unless the governmental entity demonstrates that the
26 interference:

27 (a) furthers a compelling governmental interest; and

28 (b) is narrowly tailored and is the least restrictive means available for the furthering of the

1 compelling governmental interest.

2 (2) Except as provided in subsection (1) of this section or for a child considered an emancipated
3 minor or for whom a specific right has been conferred under an order of limited emancipation pursuant to 41-5-
4 103, all fundamental parental rights are exclusively reserved to the parent of a child without obstruction or
5 interference by a governmental entity, including but not limited to the rights and responsibilities to do the
6 following:

7 (a) direct the education of the child, including the right to choose public, private, religious, or home
8 schools and the right to make reasonable choices within public schools for the education of the child;

9 (b) access and review all written and electronic educational records relating to the child that are
10 controlled by or in the possession of a school;

11 (c) direct the upbringing of the child;

12 (d) direct the moral or religious training of the child;

13 (e) make and consent in writing to all physical and mental health care decisions for the child,
14 except that emergency medical services may be provided to a child if necessary to prevent death or imminent,
15 irreparable physical injury or if, after a reasonably diligent effort, the parent cannot be contacted;

16 (f) access and review all health and medical records of the child;

17 (g) consent in writing before a biometric scan of the child is made, shared, or stored;

18 (h) consent in writing before any record of the child's blood or DNA is created, stored, or shared,
19 unless authorized pursuant to a court order;

20 (i) consent in writing before a governmental entity makes an audio or video recording of the child,
21 unless the audio or video recording is made during or as part of:

22 (i) a court proceeding;

23 (ii) a law enforcement investigation;

24 (iii) a forensic interview in a criminal or child abuse and neglect investigation;

25 (iv) the security or surveillance of school buildings, grounds, or transportation; or

26 (v) a photo identification card;

27 (j) be notified promptly if an employee of a governmental entity suspects that abuse or neglect or
28 any criminal offense has been committed against the child, unless the incident has first been reported to law

1 enforcement or the department of public health and human services pursuant to 41-3-201 and notifying the
 2 parent would impede an investigation;

3 (k) opt the child out of any personal analysis, evaluation, survey, or data collected by a school
 4 district that would capture data for inclusion in the state longitudinal student data system, except what is
 5 necessary and essential for establishing a student's educational record;

6 (l) have the child excused from school attendance for religious purposes or under [section 1(1)(c)];
 7 and

8 (m) participate in parent-teacher associations and school organizations that are sanctioned by the
 9 board of trustees of a school district.

10 (3) Except for law enforcement or a person making a mandatory report under 41-3-201, an
 11 employee of a governmental entity may not encourage or coerce a child to withhold information from the child's
 12 parent and may not withhold from a child's parent information that is relevant to the physical, emotional, or
 13 mental health of the child.

14 ~~(2)(4)~~ This section may not be construed as invalidating the provisions of Title 41, chapter 3, or
 15 modifying the burden of proof at any stage of the proceedings under Title 41, chapter 3.

16 ~~(3)(5)~~ ~~When (a)~~ Except as provided in subsection (5)(b), when a parent's fundamental rights
 17 protected by this section are violated, a parent may assert that violation as a claim or defense in a judicial
 18 proceeding and may obtain appropriate relief ~~against the governmental entity~~ without regard to whether the
 19 proceeding is brought by or in the name of the governmental entity, a private person, or any other party. The
 20 prevailing party in an action filed pursuant to this section is entitled to reasonable attorney fees and costs.

21 (b) When a parent's fundamental rights protected by [section 1] or this section are violated in the
 22 context of a public school, prior to seeking relief in a judicial proceeding, a parent may assert that violation and
 23 may obtain appropriate relief through:

24 (i) the school district's grievance policy and an appeal of a subsequent decision of the trustees
 25 pursuant to 20-3-210; or

26 (ii) if the violation is due to the action or inaction of an individual with a teacher, administrator, or
 27 specialist certificate, filing a complaint with the superintendent of public instruction and requesting the initiation
 28 of proceedings under 20-4-110 for the issuance of a letter of reprimand or suspension or revocation of the

1 individual's certificate.

2 ~~(4)(6)~~ As used in this section, the following definitions apply:

3 (a) "Educational record" means attendance records, test scores of school-administered tests and
4 statewide assessments, grades, extracurricular activity or club participation, e-mail accounts, online or virtual
5 accounts or data, disciplinary records, counseling records, psychological records, applications for admission,
6 teacher and counselor evaluations, reports of behavioral patterns, and health and immunization information,
7 including any medical records maintained by a health clinic or medical facility operated or controlled by the
8 school district or located on district property.

9 (b) ~~governmental~~ Governmental entity" has the meaning provided in 2-9-101."

10
11 NEW SECTION. Section 6. Codification instruction. [Sections 1 and 2] are intended to be codified
12 as an integral part of Title 40, chapter 6, part 7, and the provisions of Title 40, chapter 6, part 7, apply to
13 [sections 1 and 2].

14
15 NEW SECTION. Section 7. Effective date. [This act] is effective July 1, 2023.

16 - END -