



# **Controversial Florida Parents' Bill of Rights Law Takes Effect July 1: What Private Schools Should Know**

Insights

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Florida Governor Ron DeSantis just signed into law the Parents' Bill of Rights on June 29, enumerating the rights of parents and legal guardians to "direct the upbringing, education, health care, and mental health" of their child. Many are praising the new law as a win for parents and Florida families, with the Florida Legislature promoting transparency and parental participation in education while putting all the state statutes governing parental rights in one place. However, the law was not enacted without controversy. The Parents' Bill of Rights has also garnered the attention of various advocacy groups concerned that it may fail to consider the rights of the children it is intended to protect – and may create unintended consequences of potential liability for persons who act in good faith but without express written parental consent when providing medical care to children. Although the new law – effective July 1, 2021 – primarily limits state-run entities from infringing on certain fundamental parental rights, private schools in Florida should take note of how the Parents' Bill of Rights may change their practices now and in the future.

## **Parental Consent Necessary for Medical Care for Minors**

Under new Fla. Stat. § 1014.06, licensed health care providers and practitioners as defined in Fla. Stat. § 456.001 may not provide, solicit, or arrange to provide health care services to children without first receiving written parental consent.

The definition of licensed health care practitioner is broad. For school purposes, it includes physicians, nurses, speech-language and audiology therapists, occupational therapists, nutritionists, athletic trainers, massage practitioners, physical therapists, psychologists (including licensed school psychologists), clinical, counseling, and psychotherapy services.

Schools should note that § 1014.06 provides that violators will be subject to disciplinary action under licensing statutes, administrative fines, and potential criminal action.

## **Could New Law Chill Emergency Medical Assistance?**

While this law was awaiting approval from the governor, some of Florida's major medical associations signed a letter urging him to veto the bill. Many were concerned that the criminal sanctions included in this law might limit a physician's ability – and willingness – to provide

voluntary medical care to an injured child without first receiving the written consent of a parent who may not be present at the time of the emergency.

One can argue, however, that the law provides an exception for voluntary emergency services by limiting the impact of § 1014.06. The law states: “Except as otherwise provided by law, a health care practitioner ... may not provide or solicit or arrange to provide health care services ... without first obtaining written parental consent.” Importantly, this new law did not eliminate the broad immunity provided to volunteers under the existing Good Samaritan Law under Fla. Stat. § 786.13. That law provides that “any person, including those licensed to practice medicine, who gratuitously and in good faith renders emergency care or treatment . . . at the scene of an emergency outside of a hospital, doctor’s office, or other place having proper medical equipment, without objection of the injured victim or victims thereof, shall not be held liable for any civil damages as a result of such care or treatment . . . where the person acts as an ordinary reasonably prudent person would have acted under the same or similar circumstances.”

### **What Steps Should Schools Take?**

Many schools already require parents to sign medical treatment waivers at the beginning of the school year, as a part of the enrollment agreement, and/or when completing FHSA athletic participation forms. However, this new parental consent requirement is much broader than what these waivers typically entail.

Each school should think through the various types of medical treatment (and health care-related testing) school nurses, athletic trainers, guidance counselors, learning resource specialists, and others provide to students. Schools should then determine whether their enrollment agreements and/or other documents cover all situations.

If not, now is the time to create and have parents sign a more comprehensive waiver to cover issues that could come up in the 2021-2022 school year (or at 2021 summer camp). The consent should grant broad authority for school personnel and volunteers to provide routine health or medical care (administration of medicines, treatment of injuries, guidance counseling, testing, etc.) as well as emergency medical care (injections with epi pens, use of AEDs, treatment of concussions, wrapping or bandaging wounds, etc.) when students are on campus, on school buses, or at a school-sponsored event.

Although it is sometimes difficult to do, schools should try hard to have both parents sign these medical consent forms. Failure to do so could lead your school (and health care practitioner) to risk a potential allegation of violation of the statute by the non-signing parent.

### **Additional Obligations Applicable to Private Schools**

The Parents’ Bill of Rights outlines additional obligations that apply only to public schools. However, some additional obligations apply both to governmental entities and “other institutions” (which

arguably includes private schools). For example:

- 1014.04(d) makes clear that all parents have the right to access and review all school records relating to their minor child. Previously, this provision applied only to public schools. Although this section was intended to promote parental involvement in their child's education, Equality Florida and other LGBTQ community advocates are concerned that this provision effectively risks an LGBTQ student being outed by school officials to their parents if the student confides in a teacher or school counselor about their sexuality or gender. Further, many private schools have provisions in their tuition agreements that allow the school to withhold school transcripts and records until the parent or guardian completes payment. Florida courts have upheld these provisions. Although parents may try to use this new provision to obtain transcripts even though the student's account may be unpaid, an equally viable argument is that the new law provides the parent with the right to "see" the information in the files but not mandate release of the transcript or other records.
- Section 1014.04(b) gives parents the right to direct the upbringing and moral or religious training of their minor child. Thus, parents may object and ask to opt out of certain religious practices.
- Section 1014.04(j) gives parents the right to be promptly notified if a criminal offense has been committed against their minor child, unless the offense has been reported to law enforcement or the Department of Children and Families and notifying the parent would impede the investigation. Thus, if the school makes a report to child abuse authorities about a sexual on student sexual abuse or harm to the child from someone other than the parent, the school must promptly notify the parent of such report.
- Section 1014.04(e) gives parents the right to make health care decisions for their minor child, unless otherwise prohibited by law. Because Fla. Stat. § 1002.20(3)(b) already provides parents the right to exempt their child from immunization requirements imposed by either private or public schools, many parental groups that oppose mask mandates and vaccinations are celebrating the law's broad language as a win. The Parents' Bill of Rights is ultimately intended to provide an "all-in-one" notice to parents and legal guardians about their legally protected rights to direct and protect the upbringing and health of their children. Schools that are also entrusted to protect the health, safety, and welfare of students in their care are encouraged to consider how the new law impacts existing practices.

## Conclusion

Fisher Phillips will continue to monitor further developments and provide updates in the coming months, so make sure you are subscribed to [Fisher Phillips' Insight System](#) to gather the most up-to-date information. If you have any questions or need a new medical consent form, please contact your Fisher Phillips lawyer, the authors of this Insight, or any member of [our Education Practice Group](#).

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