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**HOUSE OF REPRESENTATIVES
COMMITTEE ON
STATE ADMINISTRATION
ANALYSIS**

BILL #: HB 215
RELATING TO: Parental Rights
SPONSOR(S): Representative(s) Cusack
TIED BILL(S): None

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) STATE ADMINISTRATION
 - (2) COUNCIL FOR SMARTER GOVERNMENT
 - (3)
 - (4)
 - (5)
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I. SUMMARY:

Under the Federal Family Education Rights and Privacy Act (FERPA), parents and students have certain rights to access educational records unless certain legal restrictions apply. This act applies to education agencies and institutions that receive federal funding from the U.S. Department of Education.

Throughout Florida law, parents of minor children have the right, upon request, to a true and correct copy of their child's medical and dental records. The Florida Statutes also provide for the right of access by parents to their children's school records.

This bill amends s. 61.13(2)(b)3., F.S., which provides for access to records and information pertaining to a minor child, including medical, dental, and school records by parents. This bill adds that "[f]ull rights under this subparagraph apply to *either parent* unless a court order specifically revokes these rights." This bill further provides that parents having these rights have the same rights to "*form, substance, and manner of access*" as are available to the other parent, "including without limitation, the right to *in-person* communication with medical, dental, and education providers."

The proponents of this bill assert that many non-custodial (or secondary residential) parents are unable to access their children's school records, even though they have shared responsibility of their children and deserve equal access to their children's records. Proponents also assert that this bill only clarifies existing law, so that, for example, schools must provide the student's records equally to both parents. Opponents are concerned that the broadness of the language could be construed to allow access to records and in-person communications by parents who have limited parental rights, not originally intended by the court to have such access; thus requiring the custodial parent to return to court to revoke this new right of access.

The Florida Department of Education is concerned that the proposed wording might be interpreted to mean duplicate production of records, including mail-outs, as well as materials sent home with the student. This could be very expensive in that there is a large number of non-custodial parents. Accordingly, there is a possible significant fiscal impact to school districts, as well as other public and private medical, dental, and educational providers.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

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|-----------------------------------|---|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

Federal Law

Under the Family Education Rights and Privacy Act (FERPA), 34 C.F.R. Part 99, parents and students have certain rights to access educational records. This act applies to education agencies and institutions that receive federal funding from the U.S. Department of Education. Parents of students in these educational agencies and institutions have the right to inspect and review their child's education records, unless the agency or institution "has been provided with evidence that there is a court order, State statute, or legally binding document relating to such matters as divorce, separation or custody that specifically revokes these rights." 34 C.F.R., ss. 99.4-99.5. The federal statutes make no distinction between different types of parents, whether primary or secondary residential, or custodial versus non-custodial. Parent is defined under FERPA as "a parent of a student and includes a natural parent, a guardian, or an individual acting as a parent in the absence of a parent or a guardian." 34 C.F.R, s. 99.3.

Florida Law

Throughout the Florida Statutes, parents of minor children are given the right, upon request, to a true and correct copy of their children's medical and dental records. See ss. 395.3025, 456.057, and 466.018, F.S. Sometimes release of the record is limited; for example, only being available after the discharge of the patient, in the case of hospital records, s. 395.3025, F.S.

The Florida Statutes also provide for the right of access by parents of minors to the school records of their children. Section 61.13, F.S., governs the custody and support of children in a proceeding for the dissolution of marriage of their parents. This section also addresses who can have visitation rights and sets forth the powers of the court in making orders of this nature. This section states that

Access to records and information pertaining to a minor child, including, but not limited to, medical, dental, and school records, may not be denied to a parent because the parent is not the primary residential parent.

s. 61.13(2)(b)3., F.S.

Section 228.093, F.S., also addresses access to student records. This statute states that parents of any pupil or student attending a public school has the right, upon request to the school official, to be provided with a list of the type of records and reports relating to the student, kept by the school, and has the right, upon request, to be shown any of those records or reports. This section, however, only governs public schools not private.

C. EFFECT OF PROPOSED CHANGES:

This bill amends s. 61.13(2)(b)3., F.S., which provides for access to records and information pertaining to a minor child, including medical, dental and school records, to parents, adding that “[f]ull rights under this subparagraph apply to either parent unless a court order specifically revokes these rights.” This bill further provides that parents having these rights have the same rights to “form, substance, and manner of access” as are available to the other parent, “including without limitation, the right to in-person communication with medical, dental, and education providers.”

This language could be interpreted to require schools to provide all information, which is now provided to the custodial parent, in the *same manner* to the non-custodial parent. That information could include school newsletters, test scores, and report cards that are sent home by mail to the custodial parent. Also, discipline reports, daily communications about progress, or phone calls regarding attendance could fall into this category, requiring schools to provide these reports and make these communications to both parents, in those cases where the parents have separate residences. If the language is interpreted in this way, then the fiscal impact could be significant. 2001 Program Bill Analysis on HB 215, Florida Department of Education (January 26, 2001). However, if the proposed language is interpreted to essentially restate current policy, then this bill would have little or no effect, or fiscal impact.

This bill could be interpreted in more than one way with respect to whether the doctor, dentist, or school has the affirmative duty to provide all information to all parents, or whether the parents must take the initiative to acquire access to their child’s medical, dental, or school records.

Another issue is the right given by the bill to parents for unlimited “in-person communication” with medical, dental, or education providers. This language could be interpreted to put an additional burden, financially and in work hours, on these providers to make sure that all applicable parents receive the same information. Accordingly, medical, dental and educational providers could possibly have to increase the number of parent communications afforded and send out duplicate paperwork. This would place an additional burden on the providers.

D. SECTION-BY-SECTION ANALYSIS:

See “Effect of Proposed Changes.”

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See "Fiscal Comments."

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

See "Fiscal Comments."

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

See "Fiscal Comments."

D. FISCAL COMMENTS:

The Department of Education's Analysis of HB 215, provides that

[c]ertain parental rights are now insured under federal law and regulation. There is a concern that the proposed wording might be interpreted to mean duplicate production of records, their mailing, and other materials sent home with the student. This would be very expensive in that there is a large number of non-custodial parents. For example, the mailing cost of the school report card in Leon County was \$20,000. Six or more report card mailings might be a minimum in terms of mailing, plus the cost of production of an additional copy.

2001 Program Bill Analysis on HB 215, at 4.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill does not reduce the authority that counties or municipalities have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

The proponents of this bill assert that many non-custodial (or secondary residential) parents are unable to access their children's school records even though they have shared responsibility of their children. The proponents would like to clarify existing law so that, for example, schools must provide the student's records equally to both parents.

Opponents are concerned that the broad language in the bill could allow access by, for example, a batterer who wants to get his or her child's records from a domestic violence shelter, or wants in-person access to the shelter. Accordingly, the broad language in the bill could allow access by other persons within the broad term of "parent" which might be harmful to the child. In addition, opponents are concerned that in cases where the court has ordered limited parental rights—but did not address access to school or medical records/facilities—the new language would require access to such records/facilities by the parent with limited parental rights. If this raises concerns by the custodial parent, he or she would then have to return to court in order to restrain the other parent's right to access such records/facilities. See *generally* Correspondence from Tiffany Carr and Nina Zollo, Florida Coalition Against Domestic Violence (January 30, 2001).

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON STATE ADMINISTRATION:

Prepared by:

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