

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Education

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BILL: SB 1834

INTRODUCER: Senator Baxley

SUBJECT: Parental Rights in Education

DATE: February 8, 2022

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Palazes	Bouck	ED	<b>Favorable</b>
2.			AP	
3.			RC	

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**I. Summary:**

SB 1834 provides additional requirements for school districts to notify parents if there is a change in their student’s services or monitoring in relation to their student’s mental, emotional, or physical health or well-being and the school’s ability to provide a safe and supportive learning environment for the student.

The bill requires school districts to adopt procedures that reinforce the fundamental right of parents to make decisions regarding the upbringing and control of their children. The procedures must require school district personnel to encourage a student to discuss issues relating to his or her well-being with his or her parent, or to seek permission to discuss or facilitate discussion of the issue with the parent. Additionally, the procedures must comply with the rights of parents in accessing their student’s to educational records that are created, maintained, or used by public educational institutions.

The bill creates a cause of action for parents to seek declarative and injunctive relief against a school district that violates the provisions of the bill.

The bill requires that all student support training provided by school districts to school personnel adhere to guidelines, standards, and frameworks established by the Department of Education.

The bill prohibits a school district from encouraging classroom discussion about sexual orientation or gender identity in primary grade levels or in a manner that is not age-appropriate or developmentally appropriate for students.

The bill does not appear to have a fiscal impact. See Section V. Fiscal Impact Statement.

The bill has an effective date of July 1, 2022.

## II. Present Situation:

### Constitutional Rights of Parents

#### *Parental Guarantees in the United States Constitution*

The Fourteenth Amendment to the U.S. Constitution provides that no State shall:

[D]eprive any person of life, *liberty*, or property, without due process of law.

The U.S. Supreme Court (Court) has recognized that the Due Process Clause guarantees more than simply fair process. The Due Process Clause contains an additional component that provides a heightened level of protection against any government interference when certain fundamental rights and liberty interests are involved. The Court noted, in a case to determine the scope of grandparent visitation rights when pitted against a parent's rights, that the Fourteenth Amendment "liberty interest" at issue – the interest that parents had in the care, custody, and control over their children – was perhaps the oldest of any fundamental liberty interest that the Court had recognized.<sup>1</sup>

The Court reflected back to a 1923 decision,<sup>2</sup> when it determined that the "liberty" interest protected by the Due Process Clause included the right of parents to "establish a home and bring up children" and "to control the education of their own."

The Court also noted as early as 1925<sup>3</sup> that a child was not simply the creature of the State and that the people who nurture the child and direct the child's destiny have the right, and the high duty, to recognize and prepare the child for additional obligations. In 1944, the Court confirmed the right of parents to direct the upbringing of their children when it stated:

It is cardinal with us that the custody, care and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligations the state can neither supply nor hinder.<sup>4</sup>

Finally, in recounting the history of parental authority in 1979, the Court stated, "We have recognized on numerous occasions that the relationship between parent and child is constitutionally protected."<sup>5</sup>

#### *Parental Guarantees in the State Constitution*

Similarly, the Florida Supreme Court (Florida Court) has determined that the fundamental liberty interest in parenting one's child "is protected by both the Florida and federal constitutions. In Florida, it is specifically protected by our privacy provision."<sup>6</sup> The Florida Court also noted that

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<sup>1</sup> *Troxel v. Granville*, 530 U.S. 57 (2000).

<sup>2</sup> *Troxel* quoting *Meyer v. Nebraska*, 262 U.S. 390, 399, 401 (1923).

<sup>3</sup> *Troxel* quoting *Pierce v. Society of Sisters*, 268 U.S. 510, 534-535 (1925).

<sup>4</sup> *Troxel* quoting *Prince v. Massachusetts*, 321 U.S. 158, 166 (1944).

<sup>5</sup> *Troxel* quoting *Parham v. J.R.* 442 U.S. 584, 602 (1979).

<sup>6</sup> *Beagle v. Beagle*, 678 So. 2d 1271, 1275 (Fla. 1996).

the state constitutional privacy provision contained in article I, section 23 affords greater protection than that of the federal constitution.

The Florida Court determined that the standard of review that must be used to evaluate whether a state has intruded into a citizen's private life is the "compelling state interest standard."<sup>7</sup> Under that test, the burden of proof is on the state to justify its intrusion on privacy. The burden can be met by the state if it demonstrates that the regulation being challenged serves a compelling state interest and the regulation accomplishes its goal by using the least intrusive means.<sup>8</sup>

## **Statutory Rights of Parents of Students**

### ***Parents' Bill of Rights***

In 2021, the Florida Legislature passed the Parents' Bill of Rights Act<sup>9</sup> that established that important information relating to a minor child should not be withheld, either inadvertently or purposefully, from his or her parent, including information relating to the minor child's health, well-being, and education, while the minor child is in the custody of the school district.<sup>10</sup> The Parents' Bill of Rights provided that all parental rights are reserved to the parent<sup>11</sup> of a minor child in this state without obstruction or interference from the state, any of its political subdivisions, any other governmental entity, or any other institution, including, but not limited to, all of the following rights of a parent of a minor child in this state:<sup>12</sup>

- The right to direct the education and care of his or her minor child.
- The right to direct the upbringing and the moral or religious training of his or her minor child.
- The right to apply to enroll his or her minor child in a public school or, as an alternative to public education, a private school, including a religious school, a home education program, or other available options, as authorized by law.<sup>13</sup>
- The right to access and review all school records relating to his or her minor child.<sup>14</sup>
- The right to make health care decisions for his or her minor child, unless otherwise prohibited by law.
- The right to access and review all medical records of his or her minor child, unless prohibited by law or if the parent is the subject of an investigation of a crime committed against the minor child and a law enforcement agency or official requests that the information not be released.
- The right to consent in writing before a biometric scan of his or her minor child is made, shared, or stored.
- The right to consent in writing before any record of his or her minor child's blood or deoxyribonucleic acid (DNA) is created, stored, or shared, except as required by general law or authorized pursuant to a court order.

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<sup>7</sup> *Winfield v. Division of Pari-Mutual Wagering*, 477 So. 2d 544, 548 (Fla. 1985).

<sup>8</sup> *Id.*

<sup>9</sup> Chapter 2021-199, L.O.F.

<sup>10</sup> Section 1014.02 (1), F.S.

<sup>11</sup> Section 1014.02(2), F.S. defines a parent as a person who has legal custody of a minor child as a natural or adoptive parent or a legal guardian.

<sup>12</sup> Section 1014.04(1)(a)-(j), F.S.

<sup>13</sup> Section 1002.20, (2)(b) and (6), F.S. provide the rights of parents to enroll their child into a public or private school.

<sup>14</sup> Section 1002.20(13), F.S. provide the rights parents have when accessing student records.

- The right to consent in writing before the state or any of its political subdivisions makes a video or voice recording of his or her minor child unless such recording is made during or as part of a court proceeding or is made as part of a forensic interview in a criminal or Department of Children and Families (DCF) investigation or is to be used solely for the following purposes:
  - A safety demonstration, including the maintenance of order and discipline in the common areas of a school or on student transportation vehicles;
  - A purpose related to a legitimate academic or extracurricular activity;
  - A purpose related to regular classroom instructions;
  - Security or surveillance of buildings or grounds; or
  - A photo identification card.
- The right to be notified promptly if an employee of the state, any of its political subdivisions, any other governmental entity, or any other institution suspects that a criminal offense has been committed against his or her minor child, unless the incident has first been reported to law enforcement or the DCF and notifying the parent would impede the investigation.

A parent of a minor child has other inalienable rights that are more comprehensive than those listed in the Parent Bill of Rights, unless such rights have been legally waived or terminated.<sup>15</sup> However, the Parent Bills of Rights does not authorize a parent to abuse or neglect a child or to end or cause the end of a child's life, and does not prohibit specified actions by law enforcement, courts, or employees of agencies for child welfare.<sup>16</sup>

### ***School District Obligations***

School districts are required to develop and adopt policies to promote parental involvement in the public school system.<sup>17</sup> Additionally, school districts are required to:

- Provide a parent with specific information about his or her child's educational progress, comprehensive information about opportunities for involvement in the child's education, and a framework for building and strengthening partnerships among parents and school district personnel.<sup>18</sup>
- Afford a parent the opportunity to enroll his or her child in instruction for exceptional students or challenge a district school board's determination of the child's eligibility for a gifted or special education program.<sup>19</sup>
- Establish a policy enabling a parent to object to and contest specific instructional materials.<sup>20</sup>
- Notify a parent and obtain his or her consent before a public school student may be referred to or offered contraceptive services at school facilities or travel in a privately owned motor vehicle to a school function.<sup>21</sup>
- Afford a parent the ability to opt their student out of receiving instruction on reproductive health or any disease, including HIV/AIDS.<sup>22</sup>

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<sup>15</sup> Section 1014.04(4), F.S.

<sup>16</sup> Section 1014.04(2), F.S.

<sup>17</sup> Section 1014(1), F.S.

<sup>18</sup> Section 1002.23, F.S.

<sup>19</sup> Section 1003.57, F.S.

<sup>20</sup> Section 1006.28(2)(a)2. and 3., F.S.

<sup>21</sup> Sections 1002.20(3)(e) and (22)(c), F.S.

<sup>22</sup> Section 1002.20(3)(d), F.S.

### ***Access to Records and Information***

The rights of students and their parents with respect to education records created, maintained, or used by public educational institutions and agencies are protected under federal law.<sup>23</sup> Specifically, a parent of a K-12 student has the right to:<sup>24</sup>

- Receive accurate and timely information regarding the student's academic progress and must be informed of ways a parent can help a student succeed in school.
- Access the student's education records, including the right to inspect and review those records.
- Challenge the content of education records in order to ensure that the records are not inaccurate, misleading, or otherwise a violation of privacy or other rights.
- Privacy with respect to the student's records and reports.
- Receive annual notice of the parent's rights with respect to education records.
- Receive report cards on a regular basis that clearly depict and grade the student's academic performance in each class or course, the student's conduct, and the student's attendance.<sup>25</sup>
- Receive reports at regular intervals of the academic progress and other needed information regarding the student.
- Receive timely notification of any verified report of a substance abuse violation by the student.<sup>26</sup>
- Access information relating to the school district's policies for promotion or retention, including high school graduation requirements.<sup>27</sup>
- Access information relating to student eligibility to participate in extra-curricular activities.<sup>28</sup>
- Access information relating to the state public education system, standards, and requirements.<sup>29</sup>
- Access, review, object to, and challenge instructional and supplemental education materials.<sup>30</sup>

### ***Parental Consent for Health Care***

Any medical decision made to address a student's needs is a matter between the student, the student's parent, and a competent health care professional chosen by the parent.<sup>31</sup> The right to consent to medical treatment for a child resides with a parent who has the legal responsibility to maintain and support the child.<sup>32</sup> District school boards may adopt policies to ensure an

<sup>23</sup> Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. s. 1232g; and s. 1002.22, F.S. With limited exceptions, the FERPA prohibits the distribution of federal funds to an educational agency that has a policy or practice of disclosing the education records of a student without parental consent. Section 1002.221, F.S., incorporates FERPA into Florida law. FERPA only applies to records created for an educational purpose and maintained by an educational agency. The FERPA authorizes an education agency to disclose records without parental consent to juvenile justice and criminal justice agencies if the disclosure concerns the juvenile justice system and the system's ability to effectively serve, prior to adjudication, the student whose records are released. 34 C.F.R. s. 99.38.

<sup>24</sup> Sections 1002.20, 1002.22(2), and 1006.28, F.S.

<sup>25</sup> Section 1002.20(14), F.S.

<sup>26</sup> Section 1002.20(3), F.S.

<sup>27</sup> Section 1008.25, F.S.

<sup>28</sup> Section 1006.195(1), F.S.

<sup>29</sup> Section 1002.23, F.S.

<sup>30</sup> Sections 1002.20(19) and 1006.28, F.S.

<sup>31</sup> Section 1006.0625, F.S.

<sup>32</sup> *O'Keefe v. Orea*, 731 So. 2d 680, 686 (Fla. 1st DCA 1998).

appropriate response in emergency situations and the provision of first aid and emergency medical care.<sup>33</sup> In addition, a volunteer team physician who, gratuitously and in good faith, agrees to render emergency care or treatment to any participant at an athletic event sponsored by a public or private elementary or secondary school event in connection with an emergency at the event is immune from damages arising as a result of care or treatment provided in good faith, with regard to human rights, safety, and property.<sup>34</sup>

### **Florida’s School Counseling Framework**

Florida’s School Counseling Framework represents the continuing evolution of prekindergarten–12 school counseling programs.<sup>35</sup> When first articulated in 1995, this model represented a departure from prior “guidance” program concepts to one that is comprehensive in scope, preventative in design, and developmental in nature. The Framework has been increasingly used by districts to structure their school counseling programs to include a standards-based student development curriculum and activities.<sup>36</sup>

### **III. Effect of Proposed Changes:**

SB 1834 modifies s. 1001.42, F.S., to provide additional requirements for school districts to notify parents if there is a change in their student’s services or monitoring in relation to their student’s mental, emotional, or physical health or well-being and the school’s ability to provide a safe and supportive learning environment for the student.

The bill requires school districts to adopt procedures that reinforce the fundamental right of parents to make decisions regarding the upbringing and control of their children. The procedures must require school district personnel to encourage a student to discuss issues relating to his or her well-being with his or her parent; or to seek permission to discuss or facilitate discussion of the issue with the parent. Additionally, the procedures must comply with the rights of parents in accessing their student’s educational records that are created, maintained, or used by public educational institutions. The bill does provide that information could be withheld if a reasonably prudent person would believe that such disclosure would result in abuse, abandonment, or neglect of the student, and specifies that it does not limit the duty of school district personnel to report suspicion of such acts to the Department of Children and Families.

The bill prohibits a school district from adopting procedures or student support forms that:

- Prohibit a parent from accessing any of his or her minor child’s education records created, maintained, or used by the school district.
- Require school district personnel to withhold from a parent information about his or her student’s mental, emotional, or physical health or well-being, or a change in related services or monitoring; or

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<sup>33</sup> Section 1001.43, F.S.

<sup>34</sup> Section 768.135, F.S.

<sup>35</sup> Florida Department of Education, *Florida’s School Counseling Framework*, at 9 (2010), available at <https://www.fldoe.org/core/fileparse.php/7690/urlt/0070167-finalcounselframework2010.pdf>, (last visited Feb, 4, 2022).

<sup>36</sup> *Id.*

- Encourage or have the effect of encouraging a student to withhold from a parent such information, unless a reasonably prudent person would believe that disclosure would result in abuse, abandonment, or neglect.

The bill specifies that school district personnel may not discourage or prohibit parental notification of and involvement in critical decisions affecting a student's mental, emotional, or physical health or well-being.

The bill prohibits a school district from encouraging classroom discussion about sexual orientation or gender identity in primary grade levels<sup>37</sup> or in a manner that is not age-appropriate or developmentally appropriate for students.

The bill creates a cause of action for parents to seek declarative and injunctive relief against a school district that violates the provisions of the bill. A prevailing parent may receive damages and is entitled to reasonable attorney fees and court costs.

The bill requires that all student support training provided by school districts to school personnel adhere to guidelines, standards, and frameworks established by the Department of Education. The DOE is required to review and update, as necessary, by June 30, 2023, for compliance with the provisions of this bill, the following:

- School counseling frameworks and standards;
- Educator practices and professional conduct principles; and
- Other student services personnel guidelines, standards, or frameworks.

The bill has an effective date of July 1, 2022.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

None.

##### **B. Public Records/Open Meetings Issues:**

None.

##### **C. Trust Funds Restrictions:**

None.

##### **D. State Tax or Fee Increases:**

None.

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<sup>37</sup> Florida statutes does not define "primary grades." Rule 6A-4.0142, F.A.C. Provides the requirements for teacher certification in prekindergarten/primary education, the certification covers instruction provided to students age 3 through grade 3.

E. Other Constitutional Issues:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill requires the DOE to review and update, as necessary, existing guidelines, standards and frameworks. School districts may need to adopt updated training materials based on the DOE review. The fiscal impact of these changes is indeterminate.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 1001.42 of the Florida Statutes.

The bill creates an unnumbered section of Florida law.

**IX. Additional Information:**

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.