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H.B. 8*
135th General Assembly

Bill Analysis

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Version: As Reported by Senate Education

Primary Sponsors: Reps. Swearingen and Carruthers

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SUMMARY

Parents' Bill of Rights

- Requires public schools to:
 - Adopt a policy that promotes parental involvement in the public school system by the first day of July following the bill's effective date;
 - Ensure that any sexuality content is age-appropriate and developmentally appropriate;
 - Provide parents with an opportunity to review any instructional material that includes sexuality content and to request to excuse their student from that instruction;
 - Notify parents about school-provided healthcare services and the option to withhold consent or decline any specified service;
 - Promptly notify parents about substantial changes to the health services or monitoring provided to their children by their school related to the student's mental, emotional, or physical health or well-being, or the school's ability to provide a safe learning environment;
 - Prohibit school personnel from encouraging a student to withhold from a parent information concerning the student's health or well-being; and
 - Establish a process under which the school must resolve written concerns submitted by parents about topics addressed in the bill.

* This analysis was prepared before the report of the Senate Education Committee appeared in the Senate Journal. Note that the legislative history may be incomplete.

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- Maintains that a parent has a fundamental right to make decisions concerning the upbringing, education, and care of the parent’s child.
- Entitles the sections of the bill regarding parental involvement and notification about sexuality content and health care services or monitoring as the “Parents’ Bill of Rights.”

Released time religious instruction

- Requires school districts to adopt a policy authorizing students to be excused from school to attend a released time course in religious instruction.
- Requires school districts to collaborate with a sponsoring entity of a released time course in religious instruction to identify a time for the course to be offered during the school day.
- Permits a school district to require a sponsoring entity’s instructors and volunteers undergo criminal records checks in a manner determined by the district.

DETAILED ANALYSIS

Parents’ Bill of Rights

Parents’ right to make decisions concerning a child

The bill states that the General Assembly maintains that a parent has a fundamental right to make decisions concerning the upbringing, education, and care of the parent’s child.¹

Policy of parental involvement

The bill requires public schools (school districts, community schools, and STEM schools) to develop and adopt a policy that promotes parental involvement in the public school system by providing parental notification on student health and well-being and instructional materials that contain sexuality content. Under the bill, a “parent” includes either the natural or adoptive parents of a student and a court-appointed guardian. Each school must adopt its policy by the first day of July following the bill’s effective date. It must also make its policy publicly available and post it prominently on its publicly accessible website, if it has one.²

Sexuality content

The bill defines “sexuality content” as “any oral or written instruction, presentation, image, or description of sexual concepts or gender ideology provided in a classroom setting.” The bill excludes from the definition of sexuality content instruction or presentations in sexually transmitted infection education, child sexual abuse prevention, and sexual violence prevention education provided by school districts, community schools, and STEM schools, and incidental references to sexual concepts or gender ideology occurring outside of formal instruction or

¹ R.C. 3313.473(A).

² R.C. 3313.473(B), (C), and (G). R.C. 3313.473 applies to community schools and STEM schools through references in R.C. 3314.03(A)(11)(d) and 3326.11.

presentations on such topics, including references made during class participation and in schoolwork.³

Under the policy, public schools must ensure that any sexuality content is age-appropriate and developmentally appropriate for the age of the student receiving the instruction, regardless of the age or grade level of the student. Further, prior to providing instruction that includes sexuality content or permitting a third party to do so, a school must provide parents an opportunity to review any instructional material that includes sexuality content. Upon the request of a student's parent, the school must excuse that student from instruction that includes sexuality content and permit the student to participate in an alternative assignment. The bill prohibits a school or a third party from providing instruction that includes sexuality content to students in grades kindergarten through three.⁴

Under the bill, "age-appropriate" and "developmentally appropriate" content refers to activities or items that are generally accepted as suitable for children of the same chronological age or level of maturity or that are determined to be developmentally appropriate for a child, based on the development of cognitive, emotional, physical, and behavioral capacities that are typical for an age or age group.⁵

Student healthcare and well-being

Parental notification requirements

Under the bill, each parental involvement policy generally must require schools to adopt a procedure to obtain authorization from parents prior to providing any type of health care service to the student and to notify parents at the start of each school year of the healthcare services offered by, or facilitated in cooperation with, the school and their option to withhold consent or decline any specified service. Under the procedure, a parent may choose whether to authorize a district to provide a health care service to the parent's child. The bill clarifies that parental consent to health care services does not waive the parent's right to access the parent's student's educational or health records or to be notified about a change in the student's services or monitoring. Prior to providing a health care service to a student, schools must notify a parent whether the service is required to be provided by the school under state law and if other options to access the service exist. This requirement may be satisfied by an annual notice to parents at the beginning of the school year. However, the requirements to receive parental authorization and notify parents prior to providing health care services do not apply to emergency situations, first aid, other unanticipated minor health care services, or health care services provided pursuant to a student's individualized education program (IEP) or 504 plan created under the federal Rehabilitation Act of 1973.⁶

³ R.C. 3313.473(G)(5).

⁴ R.C. 3313.473(B)(1) and (E).

⁵ R.C. 3313.473(G)(7).

⁶ R.C. 3313.473(B)(4) and (G); see also R.C. 3323.01 and the "Rehabilitation Act of 1973," 29 United States Code (U.S.C.) 794, not in the bill.

Each school also must promptly notify parents about substantial changes to a student's services or monitoring related to the student's mental, emotional, or physical health or well-being, including counseling services, or the school's ability to provide a safe and supportive learning environment. The notice must reinforce the parents' right to make decisions regarding the upbringing and control of their children and note the school will not limit their access to the school's student education and health records. Each policy must specify the manner in which a student's parent will be notified of any substantial change in the student's services.⁷

The bill defines a "student's mental, emotional, or physical health or well-being" to include, at a minimum, any of the following:⁸

1. A student's academic performance;
2. Any significant sickness or physical injury, or any psychological trauma suffered by a student;
3. Any harassment, intimidation, or bullying by or against a student in violation of school policy;⁹
4. Any request by a student to identify as a gender that does not align with the student's biological sex, which is defined as the biological indication of male and female, including sex chromosomes, naturally occurring sex hormones, gonads, and unambiguous internal and external genitalia present at birth, without regard to an individual's psychological, chosen, or subjective experience of gender; and
5. The exhibition of suicidal ideation or persistent symptoms of depression, or severe anxiety, or other mental health issues.

Prohibition on withholding student health information

Under the bill, a school's policy must prohibit school personnel from directly or indirectly encouraging a student to withhold from a parent information about the student's mental, emotional, or physical health or well-being or a change in services or monitoring related to the student's health. The policy further must prohibit school personnel from discouraging or prohibiting parental notification of and involvement in decisions affecting a student's mental, emotional, or physical health or well-being.

Submission of written concerns

Under the bill, a school's policy must permit parents to file with the school written concerns related to topics addressed in the bill, notify parents of this permission, and establish a process for a principal or assistant principal to resolve the concern within 30 days of its receipt. A parent may appeal a principal's or assistant principal's decision to the district superintendent or equivalent official for a community or STEM school ("superintendent").

⁷ R.C. 3313.473(B)(2).

⁸ R.C. 3313.473(G).

⁹ R.C. 3313.666, not in the bill.

If a parent appeals a principal's or assistant principal's decision, the superintendent or the superintendent's designee must conduct a hearing on the decision. Based on the findings of that hearing, the superintendent must decide whether to affirm the principal's or assistant principal's decision. If the superintendent does not affirm that decision, then the superintendent must determine a resolution to the parent's concern. A parent may appeal a superintendent's decision to the district board of education or equivalent body for a community or STEM school ("board of education"). The board of education must review the superintendent's decision, and, if it determines it necessary, hold a hearing on the decision and, based on that hearing, either affirm the superintendent's decision or determine a new resolution to the parent's concern.

The bill clarifies that the written concern procedure and appeals process do not prevent a parent from contacting a member of a board of education regarding the parent's concerns with the operation of a school under the board's supervision.¹⁰

Retention of parental rights

The bill states that it does not prescribe all rights of parents or preempt or foreclose claims or remedies in support of parental rights that are available under the Ohio Constitution, Ohio Revised Code, or Ohio common law.¹¹

Exceptions

The bill explicitly states that nothing in the bill requires disclosure or activity that conflicts with or violates any of the following:

1. The standards for privacy of individually identifiable health information prescribed in federal rule pursuant to the federal Health Insurance Portability and Accountability Act;
2. State law governing the use and disclosure of protected health information by specified covered entities;
3. Confidentiality privileges established under continuing law for attorneys, physicians, psychologists, and certain other mental health professionals;
4. The federal Family Educational Rights and Privacy Act (FERPA); or
5. The rights of crime victims under the provisions of state law and the Ohio Constitution commonly known as Marsy's Law.

The bill also states that nothing in the bill requires disclosure or activity in violation of any court order, including a condition of bond, a protection order or consent agreement issued pursuant to continuing law, or a condition of a community control sanction, post-release control sanction, or parole.

¹⁰ R.C. 3313.473(B)(5).

¹¹ R.C. 3313.473(D).

Finally, the bill states that nothing in the bill prohibits or limits the career and academic mentoring and counseling between teachers and students in the regular course of the school day.¹²

Background

Current law affords parents the right to receive notice, review, and opt their student out of instruction on certain subject areas. School districts that offer instruction in sexually transmitted infection education that goes beyond certain prescribed criteria, for example, are required to notify all parents of that instruction, including notification of the names of the instructor, vendor, or curriculum used. Upon the request of a student's parent, school districts are required to provide the parent any materials associated with the instruction of sexually transmitted infection education or other sexual education in that student's school.¹³ Additionally, school districts must establish a parental advisory committee or some other strategy to enable parental review of instructional materials and academic curricula.¹⁴ Current law also requires a school district to excuse a student from instruction in sexually transmitted infection education, personal safety and assault prevention, and other subjects upon the parent's request.¹⁵

Finally, the law requires public schools to establish policies on parental involvement in schools that allow parents to be actively involved in their children's education and maintain "consistent and effective" communication between parents and their children's schools.¹⁶

Released time religious instruction

Policy on released time courses in religious instruction

The bill *requires*, instead of *permits*, as under current law, school district boards of education to adopt a policy authorizing students to attend a released time course in religious instruction conducted by a private entity off school district property during regular school hours. The bill maintains existing requirements for such a policy, but additionally requires a school district board of education to collaborate with a sponsoring entity of a released time course in religious instruction to identify a time to offer the course during the school day. It also permits a district board to include a requirement for a criminal records check of any instructors or volunteers of the private entity. The district board must determine the manner in which those checks are conducted.¹⁷

¹² R.C. 3313.473 (F); see also the "Family Educational Rights and Privacy Act of 1974," 20 U.S.C. 1232g and R.C. 2151.34, 2317.02, 2903.213, 2903.214, 2919.26, 2930.07, 2930.10, 3113.31 3798.01, 4732.19, 5122.04 or Chapter 3798, none in the bill.

¹³ R.C. 3313.6011(C), not in the bill.

¹⁴ R.C. 3313.212, not in the bill.

¹⁵ R.C. 3313.60(A)(5), not in the bill.

¹⁶ R.C. 3313.472(A), not in the bill.

¹⁷ R.C. 3313.6022.

Background

Current law permits a board of education to adopt a policy that authorizes students to attend a released time course in religious instruction during regular school hours. Under law unchanged by the bill, excuses from school under a released time policy are to be granted only if all of the following conditions are met:¹⁸

1. The student's parent or guardian provides written consent;
2. The sponsoring entity maintains attendance records and makes them available to the student's school district;
3. The sponsoring entity, parent, guardian, or student, including a student with disabilities, takes complete responsibility for transportation to and from the place of instruction;
4. The sponsoring entity makes provisions for and assumes liability for the student;
5. No public funds are spent and no public school personnel are involved in providing the religious instruction; and
6. The student assumes responsibility for any missed schoolwork.

Additionally, under current law, a student may not be released from a core curriculum subject course to attend a religious instruction course. Schools cannot consider students attending a released time course in religious instruction to be absent from school during such instruction.

Law unchanged by the bill also addresses the ability to earn high school credit for released time religious instruction and grants school districts, members of boards of education, and district employees immunity from liability in a civil action for injuries allegedly arising during a student's transportation to or from a place of instruction when private transportation is used under a released time policy.¹⁹

HISTORY

Action	Date
Introduced	02-15-23
Reported, H. Primary & Secondary Education	06-14-23
Passed House (65-29)	06-21-23
Reported, S. Education	---

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¹⁸ R.C. 3313.6022(B) and 3313.6030.

¹⁹ R.C. 3313.6022(C) and (D).