



# Parental Rights Under Federal Law

An NCSBA Webinar

Presented by Kathy Boyd

NCSBA Senior Staff Attorney

[kboyd@ncsba.org](mailto:kboyd@ncsba.org)

The information in this presentation is for educational purposes only and does not constitute legal advice. No attorney-client relationship is intended or created by participating in this webinar teaching program. For advice on specific matters, please consult with your board attorney or other legal counsel.

What parent rights  
over schooling are  
guaranteed under  
the U.S.  
Constitution?



# Parental Rights Under the U.S. Constitution



---

**Parents have the right to choose to have a child taught a language other than English.**

---

Right is based on the Due Process Clause of the 14<sup>th</sup> Amendment.

“...nor shall any state deprive any person of life, **liberty**, or property without due process of law...”

---

“His right thus to teach and the right of parents to engage him so to instruct their children...are within the liberty of the [14<sup>th</sup>] Amendment.”

*Meyer v. Nebraska*, 262 U.S. 390 (1923)

# Parental Rights Under the U.S. Constitution



---

**Parents have a constitutional right to direct the upbringing and education of their children.**

**This includes the right to choose to send a child to private school rather than public school.**

---

The State has power to reasonably regulate all schools, to require children to attend school, and to require certain studies plainly essential to good citizenship

---

“The fundamental theory of liberty...excludes any general power of the State to standardize its children by forcing them to accept instruction from public teachers only. The child is not the mere creature of the State; ; [parents] have the right...to recognize and prepare him for additional obligations.”

*Pierce v. Society of Sisters*, 268 U.S. 510 (1925)

# Parental Rights Under the U.S. Constitution

The constitutional right to direct the upbringing and education of one's children is subject to reasonable state regulation and **does not include the right to veto curricular decisions** of school officials. For example:

- Community service requirement for graduation does not infringe unconstitutionally on the parents' right to control their children's education. *Herndon v. Chapel Hill-Carrboro City Bd. of Educ.*, 89 F.3d 174 (4<sup>th</sup> Cir. 1996)
- Compulsory attendance at a school assembly on AIDS awareness did not unconstitutionally infringe parents' right to direct their child's education because that right does not include the right to dictate the curriculum at the public school to which they have chosen to send their children. *Brown v. Hot, Sexy, and Safer Productions*, 68 F.3d 525 (1<sup>st</sup> Cir. 1995), *cert. denied*, 516 U.S. 1159 (1996)
- Parent did not have the right to exempt her child from participating in middle school health curriculum because parents do not have a fundamental right to tell a public school what his or her child will and will not be taught. *Leebaert v. Harrington*, 332 F.3d 134 (2<sup>nd</sup> Cir. 2003)

# Parental Rights Under the U.S. Constitution

The constitutional right to direct the upbringing and education of one's children also **does not include the right to demand that public schools accommodate parents' preferences for a non-public education.** For example:

- School board policy of conditioning Section 504 services on attendance in its public schools did not substantially infringe on the right of parents to choose a religious school over public school. The right to a religious education does not extend to a right to demand that public schools accommodate a parent's educational preferences. *D.L. v. Balt. City Bd. of Sch. Comm'r*, 706 F.3d 256 (4<sup>th</sup> Cir. 2013)
- Homeschooling parents had no right to send their children to public school on a part-time basis or to pick and choose which courses their children will take from the public school. School board's policy prohibiting part-time attendance was proper because the district had the right to allocate resources and control curriculum as it saw fit. *Swanson V. Guthrie Independent Sch. Dist. I-L*, 135 F.3d 694 (10<sup>th</sup> Cir. 1998)



And now for  
a twist...



# Parental Rights Under the U.S. Constitution

Parental rights may be broader when a law or rule interferes with both (1) the parents' interest in directing the upbringing of their children AND (2) their free exercise of religion. This is an unsettled area of the law.

- The court invalidated a state's compulsory attendance law as applied to Amish parents who refused on religious grounds to send their teenaged children to school.

*Wisconsin v. Yoder*, 406 U.S. 205 (1972)

- Court denied school's summary judgment motion where parent alleged that school uniform policy burdened her religious beliefs and interfered with her right to direct the religious upbringing and education of her child.

*Hicks v. Halifax Co. Bd. of Educ.*, 93 F. Supp. 2d 649

(E.D.N.C. 1999)

- The court said it would apply "strict scrutiny" to such claims. "Strict scrutiny" is a judicial standard of review under which a law or rule that substantially burdens a fundamental right (e.g., free exercise of religion) will be upheld only if the government proves the law or rule is necessary to achieve a "compelling governmental interest" and uses the least restrictive means to achieve the compelling purpose. When a court applies strict scrutiny, the law or rule usually is found unconstitutional.

# Parental Rights Under the U.S. Constitution

A few courts have held that students cannot be forced to participate in activities that are ***directly contrary*** to their religious beliefs, but this is an unsettled area of the law

Parents successfully cited religious grounds to win the right to remove their children from:

- compulsory military training

*Spence v. Bailey*, 465 F.2d 797 (6<sup>th</sup> Cir. 1972)

- a coeducational physical education class in which students had to dress in “immodest apparel.”

*Moody v. Cronin*, 484 F. Supp. 270 (C.D. Ill. 1979)

But See *Employment Division v. Smith* (494 U.S. 872 1990) (ruling that generally applicable laws not targeting specific religious practices do not violate the free exercise clause)

# Parental Rights Under the U.S. Constitution

Schools are not compelled to excuse student participation just because the family disagrees with, or dislikes, the *ideas* presented or because the *ideas* conflict with their religious beliefs.

## Examples:

- No constitutional violation where student was required to read from textbooks parents found religiously objectionable. *Mozart v. Hawkins Co. Bd. of Ed.*, 827 F2d 1058 (6<sup>th</sup> Cir. 1987)
- No burden on free exercise rights where student was not actually required to read book his parents found religiously objectionable. The student was excused from classroom discussion about the book and given an alternative to read. (*Coble v. Lake Norman Charter Sch.*, 2021 U.S. Dist. LEXIS 53932 (W.D. N.C. 2021))

# In summary...

- 1. Parents have the right, in a general sense, to direct their child's education. The right is limited in scope and is subject to reasonable state government regulation. The Supreme Court has interpreted this right to include:**
  - the right to decide whether their children will receive a public or private education
  - The right to have their child taught in a language other than English
  - The right to withdraw the child from public education where the parent's religion requires it as part of a way of life.
- 3. The Supreme Court has never interpreted parents' rights to include the right to:**
  - ✗ dictate the curriculum
  - ✗ limit the flow of information from the school (e.g., allow their child to be exposed only to ideas that are consistent with the parent's religious, moral, or philosophical beliefs)
  - ✗ jeopardize the health and well-being of other children.
- 2. Lower courts have ruled that parents have no right to the following, even when their objection is religiously motivated:**
  - ✗ Exempt their child from certain reading programs the parent finds objectionable
  - ✗ Exempt their child from a school's community-service requirement
  - ✗ Exempt their child from an assembly program that includes sexually explicit topics
  - ✗ Exempt their child from the school health curriculum
  - ✗ Send their child to public school on a part-time basis in order to pick and choose which courses their child will take from the public school
  - ✗ Demand the school waive its policy requiring enrollment in order to receive Section 504 services
- 4. Parents' rights to the free exercise of religion and right to direct the religious upbringing of their children *may* trump laws or school rules that require or prohibit actions that are in direct conflict with their religious beliefs. *Consult your attorney!***

# Changing Gears



# Parental Rights Provided by Federal Statutes

Congress can (and does) give parents additional rights beyond those provided by the Constitution. For example:

- FERPA
- PPRA
- ESEA/ESSA
- Title I
- McKinney-Vento
- IDEA

# Family Educational Rights and Privacy Act (FERPA)

20 U.S.C. § 1232g; 34  
C.F.R. Part 99

PLS Policy 4700, Student  
Records

## Purpose and Scope

- Protects the privacy of student education records
- Gives parents some control over the disclosure of information in those records
- Applies to all LEAs that receive funds from the U.S. Dept. of Education

# FERPA

## Who is a parent?

- Natural parent
- Guardian
- Person acting as a parent in the absence of a parent or guardian, e.g.,
  - Stepparent
  - Grandparent
  - Other caregiver

## Key details

- Both custodial and noncustodial parents
  - unless there is a court order or other legally binding document revoking the noncustodial parent's FERPA rights
- Rights transfer to student
  - at age 18 or
  - when student attends an institution of postsecondary education at any age



# FERPA

## What is an education record?

- Any material in any form that is maintained by the school system and
- contains information directly related to a student
- Examples:
  - Documents
  - Electronic files
  - Handwritten notes
  - Video and audio recordings
  - Photographs
  - Health records
  - Behavior records

## Key exceptions

- Sole possession records used only as a memory aid/not shared with others
- Records maintained by a school law enforcement unit that were created by the unit for the purpose of law enforcement
- Personal knowledge
- Peer-graded assignments before they are recorded by the teacher

# FERPA

## Parental rights

- Inspect and review education records
- Consent or withhold consent to (some) disclosures of personally identifiable information from education records and to opt out of the disclosure of directory information

## Key details

- Timeline is 45 days; no right to copies of the records (usually)
- There are multiple exceptions to the consent requirement, including exception for release of directory information if parent has not opted out

# FERPA

## Parental rights (cont'd)

- Request correction to records and appeal if denied
- Receive annual notification of their rights and of the LEA's directory information policy
- File a complaint with the federal government for alleged FERPA violations

## Key details

- If appeal is lost, parent can submit an explanatory statement to be included in the student's record
- Individual notification is not required; may use any reasonably effective means, such as
  - website
  - student handbook
  - school activities calendar

# FERPA

## What is personally identifiable information (“PII”)?

- **Direct identifiers, e.g.**
  - student’s name or nickname
  - names or nicknames of other family members
  - Address of student or family members
- **Indirect identifiers, e.g.**
  - student’s DOB
  - place of birth
  - mother’s maiden name
- **Other info that would allow a reasonable person in the school community to identify the student**

## Who may access PII without consent?

- **School officials** who have a legitimate educational interest (as identified in the LEA’s FERPA notice)
- **Various others, subject to restrictions, e.g.,**
  - Individuals who need the information to protect health and safety of the student or others in an emergency
  - Program auditors
  - Social service officials
  - Juvenile justice officials
  - Officials of other schools/LEAs/post-secondary institutions where the student seeks to enroll or is enrolled
  - Pursuant to a court order or subpoena

# FERPA

## What is directory information?

- Information about a student that would not generally be considered harmful or an invasion of privacy if disclosed
- Examples include a student's
  - name, address, phone number, and email address
  - Photograph
  - Date/place of birth
  - Grade level and dates of attendance
  - Activities and sports
  - Honors and awards
  - Height and weight of athletes
  - Most recent school attended

## Key details

- Schools may (but are not required to) disclose this information without consent when:
  - (1) the information has been appropriately designated as “directory information”
  - (2) Public notice to parents has been given of the types of information the LEA has designated “directory information” and the process for opting outand
  - (3) The parent has not opted out of the disclosure of directory information



New FERPA regulations are expected from the Department of Education.

# Protection of Pupil Rights Amendment (PPRA)

20 U.S.C. § 1232h(a)

PLS Policy 4720, Surveys of Students

## Purpose and Scope

- Provides parental rights regarding:
  - conduct of surveys;
  - collection and use of information for marketing purposes; and
  - certain physical exams
- Applies to all LEAs that receive funds from the U.S. Dept. of Education

# Protection of Pupil Rights Amendment

## Overview

The PPRA provides 3 bundles of rights:

- Consent
- Receive notice and an opportunity to opt out
- Inspect



# PPRA

## Who is a parent?

The term “parent” includes:

- Legal guardian
- Other person standing in *loco parentis* (i.e., one who has assumed the status and obligation of a parent without a formal adoption or award of legal custody)
  - Grandparent
  - Stepparent
  - A person who is legally responsible for the child’s welfare

## Key details

- PPRA does not specifically address the rights of noncustodial parents.
- Parental rights transfer to student at age 18 or when student becomes emancipated under state law.

PPRA

Parental Right

**CONSENT TO  
CERTAIN SURVEYS**

Parental consent is necessary before a student is required to submit to a “protected information survey” if the survey is funded in whole or part by a program of the USDOE

# PPRA

Parental Right:  
Consent to Certain  
Surveys

**PROTECTED  
INFORMATION  
SURVEYS**

1. Political affiliations and beliefs of student/parent
2. Mental or psychological problems of the student/family
3. Sex behavior or attitudes
4. Illegal, anti-social, self-incriminating, or demeaning behavior

# PPRA

Parental Right:  
Consent to Certain  
Surveys

**PROTECTED  
INFORMATION  
SURVEYS**

5. Legally recognized privileged or similar relationships, e.g.,

- Attorneys
- Doctors
- Ministers
- School counselors
- Nurses
- Psychologists

# PPRA

## Parental Right: Consent to Certain Surveys

### **PROTECTED INFORMATION SURVEYS**

6. Critical appraisals of student's family members
7. Religious practices, affiliations, or beliefs of the student/parent
8. Income, other than as required by law to determine program eligibility

PPRA

Parental Right

**NOTICE AND  
OPPORTUNITY FOR  
OPT OUT**

Parents have the right to receive **notice** and an opportunity to **opt out** of:

- Any other protected information survey, regardless of funding (even if survey is optional)
- Any non-emergency, invasive physical exam or screening that is
  - required as a condition of attendance;
  - administered by the school and scheduled in advance; and
  - not necessary to protect the immediate health and safety of a student (some exceptions apply)

# PPRA

## Parental Right

### **NOTICE AND OPPORTUNITY FOR OPT OUT (cont'd)**

Parents have the right to receive **notice** and an opportunity to **opt out** of:

Activities involving the collection, disclosure, or use of **personal information** collected from students for **marketing** or to sell/distribute to others for that purpose\*

\*unless done for the exclusive purpose of developing, evaluating, or providing educational products or services to students or schools

PPRA

Parental Right

**INSPECT**

- Right to inspect instructional material used as part of the educational curriculum
- Instructional material = instructional content provided to a student
  - e.g., textbooks, slide presentations, materials in electronic or digital formats such as materials accessible through the Internet
  - NOT academic tests or academic assessments



PPRA

Parental Right

**INSPECT**  
(cont'd)

Parents have the right to inspect, upon request and before administration or use:

- Protected information surveys
- Any survey created by a third party
- Instruments used to collect personal information for marketing, sales, or distribution purposes

Summary of Rights Under the Protection of Pupil Rights Amendment (PPRA)	CONSENT	NOTICE	OPT OUT	INSPECT
<b>SURVEYS</b> <ul style="list-style-type: none"> <li>Protected topic</li> <li>Federally funded</li> <li>Participation is required</li> </ul>	<b>X</b>			
<b>SURVEYS</b> <ul style="list-style-type: none"> <li>Protected topic</li> </ul>		<b>X</b>	<b>X</b>	<b>X</b>
<b>SURVEYS</b> <ul style="list-style-type: none"> <li>Created by third party</li> </ul>				<b>X</b>
<b>PHYSICAL EXAMS</b> <ul style="list-style-type: none"> <li>Non-Emergency</li> <li>Invasive</li> <li>Required for attendance</li> <li>Administered by school</li> <li>Scheduled in advance</li> <li>Not necessary to protect immediate health &amp; safety</li> </ul>		<b>X</b>	<b>X</b>	
<b>INSTRUCTIONAL MATERIAL</b> <ul style="list-style-type: none"> <li>Used as part of curriculum</li> </ul>				<b>X</b>
<b>PI - COLLECTION/USE/DISCLOSURE</b> <ul style="list-style-type: none"> <li>For marketing purpose <u>or</u></li> <li>To sell/distribute to others for marketing purpose</li> </ul>		<b>X</b>	<b>X</b>	
<b>INSTRUMENTS USED TO COLLECT PI</b>				<b>X</b>

# PPRA and Board Policies



- LEAs must develop and adopt policies **in consultation with parents** regarding all the rights just described
- Board policies must also address arrangements to **protect student privacy** in the administration of protected information surveys and the collection, disclosure, or use of personal information for marketing
- See NCSBA's PLS 4720, Surveys of Students

# PPRA Notice Requirements

- Policies
- Dates of “opt out” activities
  - Direct notification required (e.g., email, letter, phone call)
- Rights

Every Student  
Succeeds Act (ESSA),  
amending the  
Elementary and  
Secondary Education  
Act (ESEA)  
20 U.S.C. § 6301 *et*  
*seq.*

## Purpose and Scope

- ESEA is the primary source of federal aid to K-12
- ESSA is the most recent reauthorization of ESEA (replaces No Child Left Behind legislation)
- Establishes conditions for the receipt of federal funds
  - These include providing parents rights and choices regarding their child's education
  - "Parent" is defined the same as under the PPRA

Every Student  
Succeeds Act (ESSA),  
amending the  
Elementary and  
Secondary Education  
Act (ESEA)  
20 U.S.C. § 6301 *et*  
*seq.*

## Organization

- ESSA consists of 9 sections or “Titles”
  - Title I: Programs for disadvantaged students
  - Title III: Programs to support English learners
  - Title IV: Programs to support safe and healthy students (among other things)
  - Title IX: Education for the Homeless

## ESEA/ESSA

### Parental Right (all parents)

- LEAs must make certain information available to parents and other members of the public:
  - an explanation of the state and local **assessments** required, by grade
  - an annual **report card** that contains a broad range of academic performance data in both aggregated and disaggregated form for the LEA and each school
  - the LEAs and each school's per **pupil expenditures** of federal, state, and local funds.

*See PLS policy 1310/4002, Parent Involvement*

ESEA/ESSA

Parental Right  
(all parents)

- Parents may transfer their child from a “persistently dangerous school” or if their child is a victim of a criminal offense on school grounds  
*See PLS policy 4152, Unsafe School Choice Transfer*



ESEA/ESSA

Parental Right  
Title I Parents  
Only

- Info on child's level of achievement on state academic assessments
- Teacher qualifications
- Timely notice if student has been taught by a teacher who does not meet applicable state licensing requirements for 4 or more consecutive weeks
- Info re: participation in state and local assessments, including any rule that allows "opt out" (NC does not allow opt outs on state assessments)
- Reasonable access to staff and classroom observations

*See policy 1320/3560, Title I Parent and Family Engagement*

ESEA/ESSA

Parental Right

Title III Parents  
Only

## Rights of Parents of English Learners

- To be advised of
  - their child's English language proficiency level
  - available programs and services to meet the child's educational needs
  - Their right to opt their child out of services for English learners
- To receive school communications in a language they can understand
- To receive translation and interpretive services from appropriate and competent individuals

*See Policy 4003, Translating Policies for Students and Parents*

ESEA/ESSA

Parental Right

Title IV Programs  
Only

- Written parental consent is required before any **mental health assessment or service** that is provided through a program funded under Title IV
  - except in an emergency or when consent cannot reasonably be obtained

*See policy 1310/4002, Parent Involvement*

ESEA/ESSA

Parental Right

Title IX

Parents of students who are homeless have the right to:

- request assignment to school of origin
- if request denied, receive a written explanation of the decision and explanation of appeal rights
- request transportation to the school of origin
- a dispute resolution process to challenge a decision of school officials re: eligibility, school selection, or enrollment
  - Entitled to a statement of rights and procedures written in an understandable language
  - Includes right to appeal to state-level official if dissatisfied with the local board's decision

*See policy 4125, Homeless Students*

# Take Home Exercise

- A group calling themselves “Parents 4 TransParentsy” plans to lobby the General Assembly to pass a law giving parents better insight into their children’s education by guaranteeing parents six specific rights.
- The six proposed rights are listed on the next slide.
- For each of the proposed rights, use the information provided in this presentation to decide whether:
  - (1) parents already have that right under federal law, or
  - (2) parents do not already have that right under federal law.

# Take Home Exercise

1. Copies of their child's school records on demand
2. Notice before their child is asked about his/her religious beliefs or use of drugs or alcohol
3. Notice of all assemblies, special school-wide programs, or other group activities, whether or not part of their child's curriculum, so that they may opt their children out of these activities as desired
4. Access to all materials used to instruct their child and all tests and assessments their child will have to take
5. Notice of the qualifications of all their child's teachers
6. Notice of any books or other materials their child checks out of the school library.