



August 2016

Re: Alliance Defending Freedom's Policies for Protecting Parental Rights in Education

Dear Friends,

Over the past decade, the government has consistently stripped away the rights of parents to direct the upbringing of their children. Some of the most heinous deprivations have occurred in the realm of education. Courts have ruled that parents do not have the right to prevent schools from indoctrinating their children with values that directly violate the parents' religious beliefs. They have also prevented parents from safeguarding their children's innocence and allowed schools to subject students to age-inappropriate material. Children, some as young as five years old, are being forced to undergo lessons promoting the "normalcy" of same-sex marriage. They are being given condoms by school officials who refuse to teach abstinence-only sex education. Oftentimes, schools do not even make parents aware that such education is going on.

Less than a century ago, the Supreme Court ruled that a parent's right to direct his or her child's education was fundamental and thus entitled to the highest protection that the Constitution provides. The Court understood that the family unit is the foundation of society, and therefore, parents are in the best position to decide what is best for their children. Public schooling had the noble, yet limited, purpose of providing free education to all children and instilling patriotic virtues in them, as opposed to today where schools assume the role of parents in mandating what values every child must adopt morally, socially, and philosophically.

Since the 1970s, parents have struggled to gain respect for their fundamental right to raise their children and direct their education. School officials have resisted their efforts and asserted a power to teach sex education any way they see fit, and most recently, to teach about "tolerance" of "family diversity." In recent federal court opinions, judges have ruled that parents do not have the right to object to textbooks or teaching materials used in their children's classes, that they cannot remove their children from class on days where the children are being taught religiously objectionable curriculum, and that they do not have a constitutionally protected right to know what their children are being taught. One judge went so far as to say that parents' right to direct their children's education means only that they may choose whether to send their children to public or private school, or home school; parents have no rights after that choice is made. In short, we have come to the point in our society where Courts will deny parents their rights if schools can offer any reason whatsoever to justify their actions.

With so many judges refusing to uphold parents' fundamental right to direct the upbringing of their children, the most promising solution to protect this right is through the legislative process. While the courts may not recognize that the Constitution protects this right, they will be forced to protect parental rights if they are protected by state law.

Accordingly, we have attached model legislation that protects numerous rights within a parent's freedom to direct his or her child's education. Included in the legislation are provisions that protect the following parental rights:

- The right to be notified by the school if the child is enrolled in a course that includes sex education, family planning, homosexual themes, diversity issues, and extreme violence, amongst other things.
- The right to opt the child out of any course or school activity during times when curricula or teaching materials being used are morally or religiously offensive to the parent.
- The right to opt the child in to any course or school activity that includes information about contraceptive services.
- The right to review all curricula and teaching materials used in a course in which the child is enrolled.
- The right to access the child's record, including grades and counseling records.
- The right to remove the child from school on days of religious observance.
- The right to be informed of all disciplinary proceedings.
- The right to opt the child out of any extracurricular activity in which the parent does not wish the child to participate.

The legislation also provides a standard of judgment that courts must use to evaluate if a parent's rights have been violated. This standard ensures that the parents' right to direct their children's education is treated as fundamental and thus of the highest order. Schools will no longer be able to usurp and abuse authority that belongs with parents.

Please note that this legislation is only a model. Before taking any steps to have this legislation or the policies within enacted, you should consult any pertinent state laws to avoid conflicts with existing statutes.

Finally, this model legislation may also be used as a model school board policy for enactment at the local level. While we would recommend excluding Sections 12, 13, and 14 from use in a school board policy (because these sections concern matters more appropriately addressed at the state level), the remainder of the model legislation encompasses the same parental rights that should be included in a local school board policy.

Please contact Alliance Defending Freedom at 1-800-835-5233 regarding any questions you may have about the model legislation or any school policies that are being considered or are already in effect in your community.

Very truly yours,

Kevin Theriot, *Senior Counsel*

Jeremy D. Tedesco, *Legal Counsel*

Austin R. Nimocks, *Senior Legal Counsel*

Model Legislation Re: Parental Rights in Child's Education

A Bill to protect the fundamental right of a parent to direct the education of the parent's child.

*Be it enacted by*_____.

SECTION 1. PURPOSE.

The purposes of this Act are--

- (1) to protect the right of a parent to direct the education of the parent's child, which has been regarded as a fundamental right by the Supreme Court of the United States, as specified in *Meyer v. Nebraska*, 262 U.S. 390 (1923), *Pierce v. Society of Sisters*, 268 U.S. 510 (1925), and *Wisconsin v. Yoder*, 406 U.S. 205 (1972);
- (2) to enumerate parents' statutory rights within the right to direct the child's education;
- (3) to prevent State and local school boards, administrators, educators, or other persons from unjustifiably limiting a parent's right to direct the education of the parent's child;
- (4) to ensure that the government will not interfere in the decisions and actions of a parent regarding a child's education without compelling justification;
- (5) to acknowledge a parent's responsibilities inherent in the right to direct the child's education, including maintaining an awareness of the child's curriculum;
- (6) to provide a framework for school boards to establish procedures to consider complaints that a parental right has been denied; and
- (7) to fix a standard of judicial review for parental rights regarding a child's education.

SECTION 2. DEFINITIONS.

As used in this Act:

- (1) CHILD- The term "child" has the meaning provided by State law.
- (2) CURRICULUM- The term "curriculum" means a unit of study within a course.
- (3) EXCESSIVE VIOLENCE- The term "excessive violence" means any material or communication graphically depicting violence or bloodshed.
- (4) FAMILY LIFE CURRICULA- The term "family life curricula" should be construed widely, and includes, but is not limited to, human sexual education, human sexuality issues, sexually transmitted disease education, family planning, family diversity, and any dissemination of information regarding human contraception and definitions of family. Family life curricula may constitute an entire course, a formal unit of a course, or an informal part of any subject or course.
- (5) NOTIFICATION- The term "notification" means a formal communication from an educator or administrator to a parent.
- (6) NOTIFICATION ISSUES- The term "Notification Issues" refers to family life curricula, sexual acts, and excessive violence.
- (7) OPT-IN POLICY- The term "opt-in policy" means a policy enacted at the school or school district level that requires a parent to grant written consent before that parent's child may participate in a particular curriculum or activity.
- (8) OPT-OUT POLICY- The term "opt-out policy" means a policy enacted at the school or school district level that allows a parent to temporarily remove the parent's child from instruction without penalization because of the parent's moral or religious objections to the curriculum.

Model Legislation Re: Parental Rights in Child's Education

- (9) PARENT- The term “parent” means the person or persons who have the authority to direct the education of a child under State law.
- (10) RIGHT OF A PARENT TO DIRECT THE EDUCATION OF A CHILD- The phrase “right of a parent to direct the education of a child” includes, but is not limited to, a right of a parent to—
 - (A) direct or provide for the secular education of a child; and
 - (B) direct or provide for the religious teaching of a child.
- (11) SEXUAL ACT- The term “sexual act” should be construed broadly and includes, but is not limited to, the written, spoken, or visual depiction of sexual conduct, being actual or simulated, and physical contact, in an act of apparent sexual stimulation or gratification, with a person's clothed or unclothed private areas.
- (12) TEACHING MATERIALS- The term “teaching materials” means content that conveys or aids in conveying the essential knowledge and skills of a curriculum through a medium or a combination of media for conveying information to a student. The term includes a book, supplementary materials, a combination of a book, workbook, and supplementary materials, computer software, magnetic media, DVD, CD-ROM, computer courseware, on-line services, or an electronic medium, or other means of conveying information to the student or otherwise contributing to the learning process through electronic means.

SECTION 3. CHILDREN REQUIRING SPECIAL EDUCATION.

Any provision of this Act that is in conflict with any special education law, including the Individuals with Disabilities Education Act, 20 U.S.C. 1400 et. seq., and _____ (applicable State law), shall not apply to the parent of any child whose education is directed by such special education law.

SECTION 4. RIGHT TO NOTIFICATION.

- (a) All public schools shall send a written notification to the parent of each enrolled child listing any of the child's scheduled courses or school activities that include curriculum or teaching materials involving any Notification Issues. If the child is not enrolled in any courses or subject to school activities which include curriculum or materials involving any Notification Issues, the school shall send a written notification informing the parent as such.
- (b) The notification shall:
 - (1) be understandable to students and parents;
 - (2) include a brief description of the curricula or teaching materials that involve any Notification Issues;
 - (3) provide a list of the parent's rights encompassed within the right to direct the child's education. These rights include, but are not limited to, the rights to--
 - i. opt the child out of class or parts of a class, or other school activities because of conflicts with the parent's religious or moral beliefs;
 - ii. opt the child in to certain activities requiring consent;
 - iii. view teaching materials prior to and after their use in class;
 - iv. view tests administered to the child after the test has been administered;
 - v. access the child's student record and be informed of changes to it;
 - vi. remove the child from school for a reasonable number of days of religious observance;

Model Legislation Re: Parental Rights in Child's Education

- vii. be informed of any disciplinary actions taken against the child; and
 - viii. remove the child from public school to attend a private school, a home education program, or a private tutoring program, as described in state law_____.
- (4) inform parents how the opt-out and opt-in processes operate;
 - (5) list all extracurricular activities in which the parent's child is eligible to participate;
 - (6) provide a schedule as to the times when parents may review teaching materials;
 - (7) inform parents that the qualifications of each teacher or instructor are available upon request; and
 - (8) inform parents that they may choose to opt their child out of a course or school activity for any moral or religious reason, even if the curriculum or teaching materials do not involve any Notification Issues.
- (c) The schools shall send the written notification to each parent no less than ten (10) days before the beginning of each semester. If a school offers year-long courses, then the school is only required to send the written notification at the beginning of each year.
 - (d) Each parent shall return a signed statement by the fifth full day of classes indicating that the parent received the notification and noting if the parent wishes to opt the parent's child out of or into any listed instance in the notification, and indicating if the parent wishes to opt the child out of any extracurricular activities. If a parent wishes to opt the parent's child out of any course or school activity that does not include any Notification Issues, the parent may also indicate in the signed statement for which curricula or teaching material the child is to be opted-out. A parent may change his or her decision at any time regarding extracurricular activities, or at any time before the specific curriculum is taught or school activity occurs. The parent may notify the school of the change as explained in 5(e).
 - (e) A parent who enrolls the parent's child after the start of the school year shall be given written notification at the time of enrollment. The parent shall return a signed statement within fifteen (15) days indicating that the parent received the notification and noting if the parent wishes their child to opt-out of or into each listed instance in the notification and each extracurricular activity.
 - (f) If a curriculum or teaching material changes to involve any of the Notification Issues, then the school shall send written notification to the parent of each child affected by the change no less than ten (10) days before the changed curriculum or teaching materials are to be taught or used. Parents shall send their signed statement within ten (10) days of receiving the written notification.

SECTION 5. RESPONSIBILITIES TO NOTIFY.

- (a) The school shall be responsible for ensuring that every parent receives any written notification and that all parents' signed statements are received. Any failure to properly notify and/or to receive a signed statement from a parent that results in a child being present in or absent from a course against the wishes of the parent shall be considered the fault of the school, unless the school can show that it made a good faith effort to complete the communication with the parent on at least two separate occasions via written correspondence, phone call, or in person communication.
- (b) The school shall be responsible for identifying any curricula or teaching materials that involve any Notification Issues. Any failure to properly identify any curricula or teaching

materials that involve any Notification Issues shall be considered the fault of the school, unless a person could reasonably believe that the curriculum or teaching material in question did not involve any Notification Issues.

- (c) The school shall be responsible for including or removing a parent's child at the proper times according to the parent's opt-out or opt-in wishes as indicated in the signed statement. The school shall follow the parent's opt-out or opt-in wishes from the signed statement until the school is properly notified by the parent that the parent's wishes have changed.
- (d) The school shall be responsible for ensuring that no child participates in an extracurricular activity of which a parent has opted the parent's child out.
- (e) The parent shall be responsible for properly notifying the school if the parent decides to opt the parent's child out or in after the parent has returned a signed statement stating otherwise. The parent properly notifies the school when he or she presents or delivers to the teacher or activity supervisor of the parent's child a written statement authorizing the child to be included or removed as necessary. If the parent fails to properly notify the school, the school shall honor the parent's original wishes as stated in the signed statement.
- (f) If a parent wishes to opt the parent's child out of a course or school activity for a moral or religious reason that is not encompassed in the Notification Issues, then the parent shall be responsible for properly notifying the school as to which curricula and/or teaching materials the parent wishes to opt the parent's child out. The parent may do this in the signed statement or by properly notifying the school as explained in 5(e).
- (g) A parent who wishes to opt the parent's child out of or into a course or school activity scheduled to take place within the first five (5) full days of school shall be responsible for returning the signed statement before the child is scheduled to be present for or absent from the course or school activity. This also applies to the parent of a child who has enrolled after the start of the school year when the child is scheduled to be present for or absent from a course or activity against the parent's wishes before the fifteen (15) day deadline.

SECTION 6. RIGHT TO UTILIZE THE OPT-OUT POLICY.

- (a) A parent is entitled to remove the parent's child temporarily from a course or school activity for any moral or religious reason, even if the curriculum or teaching materials do not involve any Notification Issues.
- (b) A parent is entitled to opt the parent's child out of participating in any extracurricular activity. This applies to any team, club, or group that has been recognized by the school, usually through its adherence to school and/or school board policies, such as having a faculty sponsor and following proper time, place, and manner restrictions. Participation includes membership, attending any club-sponsored meeting, and applying for membership through try-outs, auditions, interviews, or written applications.
- (c) In order to remove the child, a parent may indicate in the signed statement described in 4(d) of which activity, curricula and/or teaching materials the parent would like to opt the parent's child out. If the parent's signed statement responding to a written notification by the school shows the parent chose to take no action, the parent may still choose to remove the child by properly notifying the school as described in 5(e). Additionally, a parent may

Model Legislation Re: Parental Rights in Child's Education

retract the parent's wish to opt the child out of a course or school activity by properly notifying the school.

- (d) A parent is not entitled to remove the parent's child from a course or school activity in order to avoid a test or to prevent the child from taking a subject for an entire semester.
- (e) This section does not exempt a child from satisfying grade level or graduation requirements. The school board may create a reasonable policy for how much material a child can be opted-out of during a single course or school activity and still receive credit.
- (f) A child may be assigned an alternative assignment when the child is removed from a course or school activity because the parent chose to opt the child out.
- (g) Removal from a course or school activity because the parent chose to opt the child out shall not affect the child's grade assessments.

SECTION 7. RIGHT TO UTILIZE THE OPT-IN POLICY.

Any course or school activity that includes information about contraceptive services shall only be attended by a child if the parent opts the child in. No child shall be offered, referred to, or educated about contraceptive services without the parent's written consent. This includes any formal or informal communication with a child on school grounds or by an educator or administrator acting in his or her capacity as such.

SECTION 8. RIGHT TO REVIEW CURRENT TEACHING MATERIALS.

- (a) Current teaching materials shall be available for review by parents, regardless of whether the school has flagged it as involving any Notification Issues. The principal of each school shall be responsible for creating and publicizing a reasonable schedule before, during, and after the school year for a parent to review any teaching materials. A principal shall also accommodate any reasonable request by a parent who wishes to review teaching materials but cannot do so during the scheduled times.
- (b) During the scheduled times, a parent shall also have access to all of the parent's child's school-administered tests and state-wide assessments after they have been administered to the child.

SECTION 9. RIGHT TO ACCESS THE CHILD'S RECORD.

- (a) A parent shall have access to all written records of a school district concerning the parent's child, including--
 - (1) attendance records;
 - (2) test scores of school-administered tests and state-wide assessments;
 - (3) grades;
 - (4) extracurricular activity or club participation;
 - (5) disciplinary records;
 - (6) counseling records;
 - (7) psychological records;
 - (8) applications for admission;
 - (9) health and immunization information;
 - (10) teacher and counselor evaluations; and
 - (11) reports of behavioral patterns.
- (b) A school shall send written notification to a parent by certified mail prior to placing the parent's child in a dropout prevention or academic intervention program.

Model Legislation Re: Parental Rights in Child's Education

- (c) A school shall timely notify any verified report of a substance abuse violation by the parent's child.

SECTION 10. RIGHT TO REMOVE A CHILD FROM SCHOOL FOR DAYS OF RELIGIOUS OBSERVANCE.

A school shall allow a parent to remove the parent's child from school for a reasonable number of days of religious observance. A child's absence from school for religious observance shall not academically penalize the child and work shall be allowed to be made up, as with other excused absences.

SECTION 11. RIGHT TO BE INFORMED OF DISCIPLINARY PROCEEDINGS.

- (a) A school shall make a good faith effort to immediately inform a parent of the child's suspension, detention, subjection to corporal punishment, or other formal discipline and the reason. A school shall send written notification to a parent by certified mail within twenty-four (24) hours reporting each suspension and the reason.
- (b) A parent shall be informed in a written notice by certified mail if the parent's child is recommended for expulsion, including the charges against the child.

SECTION 12. SCHOOL BOARD'S RESPONSIBILITIES TO PARENTS

School boards shall publish the policies and rights listed herein in a manner that shall be both understandable and easily accessible.

SECTION 13. STANDARD OF JUDICIAL REVIEW.

- (a) Neither the State nor local governments, nor any official of such government acting under color of law, shall interfere with or usurp the right of a parent to direct the education of a child. In a parent's suit against the school, the parent has the burden of proof to demonstrate that--
 - (1) the action in question arises from the right of the parent to direct the education of a child; and
 - (2) a government or government official has interfered with or usurped the right.
- (b) If the parent is successful in establishing (a)(1) & (2), then the government or official has the burden of proof to demonstrate that--
 - (1) the interference or usurpation is essential to accomplish a compelling government interest; and
 - (2) the method of intervention or usurpation used by the government is the least restrictive means of accomplishing the compelling interest.
- (c) The intervention or usurpation will only be allowed to stand if the government is successful in demonstrating both elements. Otherwise, a court shall grant appropriate relief, such as declaratory or injunctive relief, and/or damages, based on the facts of the cases and law as applied to the facts.
- (d) Any violation of the statutory rights set forth in this Act fulfills the parent's burden of proof.
- (e) Any parent may raise a violation of this Act in State or Federal court or before an administrative tribunal of appropriate jurisdiction as a claim or a defense.

Model Legislation Re: Parental Rights in Child's Education

- (f) If any provision of this Act, or any application of such provision to any person or circumstance, is held to be unconstitutional, the remainder of this Act, and the application of the provision to any other person or circumstance shall not be affected.

SECTION 14. ATTORNEY'S FEES.

_____ (State Statute equivalent to Subsections (b) and (c) of section 722 of the Revised Statutes (42 U.S.C. 1988 (b) and (c)) (concerning the award of attorney's and expert fees)) shall apply to cases brought or defended under this Act. A person who uses this Act to defend against a suit by a government described in Section 14 shall be construed to be the plaintiff for the purposes of the application of such subsections.