

110TH CONGRESS
1ST SESSION

S. 2365

To require educational institutions that receive Federal funds to obtain the affirmative, informed, written consent of a parent before providing a student information regarding sex, to provide parents the opportunity to review such information, and for other purposes.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 15, 2007

Mr. GRAHAM (for himself, Mr. INHOFE, Mr. BROWNBACK, Mr. DEMINT, Mr. ENSIGN, and Mr. COBURN) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To require educational institutions that receive Federal funds to obtain the affirmative, informed, written consent of a parent before providing a student information regarding sex, to provide parents the opportunity to review such information, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Parents’ Rights Em-
5 powerment and Protection Act” (PREP Act).

1 **SEC. 2. FINDINGS.**

2 Congress makes the following findings:

3 (1) Schools and other public education facilities
4 are critical societal institutions for the education of
5 children, and parents are primarily responsible for
6 the care, health, and education of their children.

7 (2) Teachers, administrators, and other edu-
8 cational laypersons may significantly impact the edu-
9 cational development of the children in their care.
10 The responsibility of teachers, administrators, and
11 other educational laypersons is limited to their in-
12 structional interaction with the child, while a par-
13 ent's responsibilities do not end with the ring of a
14 bell or the end of the school year.

15 (3) Schools and other public education facilities
16 serve a wide array of children, each with their own
17 unique social maturity level. Schools are not ade-
18 quately equipped to properly ascertain an individual
19 child's readiness for certain types of information.

20 (4) Parents are primarily responsible for the
21 educational, societal, and personal development of
22 their children, and parents are best suited for deter-
23 mining the appropriate time, manner, and context
24 for conveying sensitive information to their children.

25 (5) Schools, in the discharge of their edu-
26 cational duties, may impart information of a sen-

1 sitive nature to children regarding a variety of
2 issues. Parents should be informed by the schools as
3 to the full content of the information to be conveyed,
4 the context of the instruction, and methods for con-
5 veying the information.

6 **SEC. 3. DEFINITIONS.**

7 (a) IN GENERAL.—In this Act, the terms “elemen-
8 tary school”, “local educational agency”, “parent”, “sec-
9 ondary school”, and “State educational agency” have the
10 meanings given the terms in section 9101 of the Elemen-
11 tary and Secondary Education Act of 1965 (20 U.S.C.
12 7801).

13 (b) ADDITIONAL DEFINITIONS.—In this Act:

14 (1) CHILD.—The term “child” means a human
15 being who has not reached the age of majority as de-
16 termined under applicable State law.

17 (2) EDUCATIONAL INSTITUTION.—The term
18 “educational institution” means any public or pri-
19 vate preschool, elementary school, or secondary
20 school, except that in the case of an educational in-
21 stitution composed of more than 1 school or depart-
22 ment which are administratively separate units, such
23 term means each such school or department.

1 **SEC. 4. PROHIBITION OF INSTRUCTION WITHOUT THE CON-**
2 **SENT OF A PARENT.**

3 (a) CONSENT REQUIRED.—Each educational institu-
4 tion that receives Federal funds or Federal financial as-
5 sistance shall obtain the affirmative, informed, written
6 consent of the parent of a child in the care of the edu-
7 cational institution prior to requesting information from
8 the child, or conveying information to the child, on sub-
9 jects concerning sex, sexuality, or related topics, regard-
10 less of whether such information—

11 (1) is gender specific;

12 (2) is related to sexual orientation; or

13 (3) conforms with other elements of the instruc-
14 tional materials of the educational institution.

15 (b) NOTICE.—Upon the request of a parent of a child
16 attending such an educational institution, the educational
17 institution shall provide to the parent—

18 (1) an opportunity to review the information
19 described in subsection (a); and

20 (2) a description of—

21 (A) the context and setting in which the
22 information will be requested, broached, dis-
23 cussed, or otherwise conveyed to the child; and

24 (B) the educational necessity of the infor-
25 mation.

1 (c) PROHIBITION REGARDING ABSENCE OF CON-
2 SENT.—In no event shall an educational institution con-
3 sider a parent’s lack of denial of the consent required by
4 subsection (a), or lack of such consent, to be consent.

5 (d) IMMEDIATE HEALTH ISSUES.—Nothing in this
6 section shall be construed to limit a school nurse or an-
7 other school health official from responding to a child’s
8 immediate health issues.

9 (e) CIVIL ACTION FOR FAILURE TO OBTAIN PAREN-
10 TAL CONSENT.—Every person or educational institution
11 who or that, under color of any statute, ordinance, regula-
12 tion, custom, or usage, of any State or territory of the
13 United States, or the District of Columbia, violates this
14 section, shall be liable to the party injured in a civil action
15 in an appropriate district court of the United States. For
16 the purposes of this section, any Act of Congress applica-
17 ble exclusively to the District of Columbia shall be consid-
18 ered to be a statute of the District of Columbia.

19 (f) NOTIFICATION.—Upon a finding by a court of ap-
20 propriate jurisdiction that a person or educational institu-
21 tion has violated this section, the court shall immediately
22 notify the appropriate local educational agency, the State
23 educational agency, and the Department of Education.

24 (g) CUT OFF OF FEDERAL FUNDING.—Each edu-
25 cational institution found by a court to have violated this

1 section shall be ineligible to receive Federal funds or Fed-
 2 eral financial assistance until the educational institution
 3 reapplies for such funds or assistance not earlier than 1
 4 year after the violation.

5 (h) PENALTIES, DAMAGES, AND FEES.—

6 (1) CIVIL PENALTY.—Any person or edu-
 7 cational institution that violates this section shall be
 8 subject to a civil fine of \$5,000 for each violation.

9 (2) TREBLE DAMAGES.—For each instance of a
 10 knowing violation of this section the fine shall be 3
 11 times the fine described in paragraph (1).

12 (3) LEGAL FEES.—In any action brought under
 13 this section, the court may award a prevailing par-
 14 ent reasonable attorney’s fees.

15 **SEC. 5. PROTECTION OF PUPIL RIGHTS.**

16 Section 445(b) of the General Education Provisions
 17 Act (20 U.S.C. 1232h(b)) is amended—

18 (1) in the matter preceding paragraph (1)—

19 (A) by striking “be required, as part of
 20 any applicable program, to”; and

21 (B) by inserting “relating to an applicable
 22 program” after “evaluation”; and

23 (2) in the matter following paragraph (8)—

1 (A) by inserting “the administrator of the
2 survey, analysis, or evaluation obtaining” before
3 “the prior consent”; and

4 (B) by striking “minor, without” and in-
5 serting “minor,”.

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