

SENATE BILL NO. 299

INTRODUCED BY J. FULLER, B. MITCHELL

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS REGARDING PARENTAL INVOLVEMENT IN A CHILD'S EDUCATION; REQUIRING A SCHOOL BOARD TO ADOPT A POLICY PROVIDING FULL ACCESS TO A PARENT TO INFORMATION REGARDING THE PARENT'S CHILD; REQUIRING AT LEAST 5 DAYS' NOTICE AND CONSENT FROM A PARENT BEFORE PROVIDING CERTAIN INSTRUCTION OR PRESENTATIONS TO A CHILD; REQUIRING A PROCEDURE FOR A PARENT TO OBJECT TO CERTAIN INSTRUCTION OR PRESENTATIONS; REQUIRING A SCHOOL BOARD TO ADOPT A POLICY FOR PARENTS TO SUBMIT CERTAIN COMPLAINTS; AUTHORIZING THE ATTORNEY GENERAL, SUPERINTENDENT OF PUBLIC INSTRUCTION, OR COUNTY ATTORNEY TO BRING A SUIT AGAINST A SCHOOL DISTRICT FOR CERTAIN VIOLATIONS; PROVIDING REMEDIES; AMENDING SECTIONS 40-6-701, 40-6-703, AND 40-6-707, MCA; REPEALING SECTION 40-6-708, MCA; AND PROVIDING AN EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 40-6-701, MCA, is amended to read:

"40-6-701. Interference with fundamental parental rights restricted -- cause of action. (1) A government entity may not interfere with the fundamental right of parents to direct the upbringing, education, health care, and mental health of their children unless the government entity demonstrates that the interference:

(a) furthers a compelling governmental interest; and
(b) is narrowly tailored and is the least restrictive means available for the furthering of the compelling governmental interest.

(2) All fundamental parental rights are exclusively reserved to the parent of a child without obstruction or interference by a government entity, including but not limited to the rights and responsibilities to do the following:

- 1 (a) direct the education of the child, including the right to choose public, private, religious, or home
- 2 schools and the right to make reasonable choices with public schools for the education of the child;
- 3 (b) access and review all written and electronic education records relating to the child that are
- 4 controlled by or in the possession of a school;
- 5 (c) direct the upbringing of the child;
- 6 (d) direct the moral or religious training of the child;
- 7 (e) make and consent to all physical and mental health care decisions for the child;
- 8 (f) access and review all health and medical records of the child;
- 9 (g) consent before a biometric scan of the child is made, shared, or stored;
- 10 (h) consent before a record of the child's blood or DNA is created, stored, or shared, unless
- 11 authorized pursuant to a court order;
- 12 (i) consent before a government entity makes an audio or video recording of the child, unless the
- 13 audio or video recording is made during or as part of:
- 14 (i) a court proceeding;
- 15 (ii) a law enforcement investigation;
- 16 (iii) a forensic interview in a criminal or child abuse and neglect investigation;
- 17 (iv) the security or surveillance of buildings grounds, or transportation of students; or
- 18 (v) a photo identification card;
- 19 (j) be notified promptly if an employee of a government entity suspects that abuse, neglect, or a
- 20 criminal offense has been committed against the child unless the parent is suspected to have caused the
- 21 abuse;
- 22 (k) opt the child out of any personal analysis, evaluation, survey, or data collection by a school
- 23 district that would capture data for inclusion in the statewide data system except data that is necessary and
- 24 essential for establishing a student's education record;
- 25 (l) have the child excused from school attendance for religious purposes;
- 26 (m) participate in parent-teacher associations and school organizations that are sanctioned by the
- 27 board of trustees of a school district; and
- 28 (n) be notified promptly if, and provide consent before, the child would share a room or sleeping

quarters with an individual of the opposite sex on a school-sponsored trip. A child whose parent does not provide consent must be permitted to attend the trip and must be provided with reasonable accommodations that do not require the child to share a room or sleeping quarters with an individual of the opposite sex.

(3) Except for law enforcement, an employee of a government entity may not encourage or coerce a child to withhold information from the child's parent and may not withhold from a child's parent information that is relevant to the physical, emotional, or mental health of a child.

(4) This section may not be construed as invalidating the provisions of Title 41, chapter 3, or modifying the burden of proof at any stage of the proceedings under Title 41, chapter 3.

(5) When a parent's fundamental rights protected by 40-6-702, 40-6-703, 40-6-707, 41-1-402, 41-1-403, 41-1-405, and this section are violated, a parent may assert that violation as a claim or defense in an administrative or judicial proceeding and may obtain appropriate relief without regard to whether the proceeding is brought by or in the name of a government entity, a private person, or any other party. The prevailing party in an action filed pursuant to 40-6-702, 40-6-703, 40-6-707, 41-1-402, 41-1-403, 41-1-405, and this section is entitled to reasonable attorney fees and costs.

(6) As used in this section, the following definitions apply:

(a) "Child" means an individual under 18 years of age.

(b) "Education record" means attendance records, test scores of school-administered tests and statewide assessments, grades, school-sponsored or extracurricular activity or club participation, email accounts, online or virtual accounts or data, disciplinary records, counseling records, psychological records, applications for admission, health and immunization information including any medical records maintained by a health clinic or medical facility operated or controlled by the school district or located on the district property, teacher and counselor evaluations, and reports of behavioral patterns.

(c) "Government entity" means the state, its political subdivisions, or any department, agency, commission, board, authority, institution, or office of the state, including a municipality, county, consolidated municipal-county government, school district, or other special district.

(d) "Parent" means a biological parent of a child, an adoptive parent of a child, or an individual who has been granted the exclusive right and authority over the welfare of a child under state law.

(e) "Substantial burden" means an action that directly or indirectly constrains, inhibits, curtails, or

denies the right of a parent to direct the upbringing, education, health care, and mental health of the parent's child. The term includes but is not limited to:

- (i) withholding benefits;
- (ii) assessing criminal, civil, or administrative penalties; or
- (iii) exclusion from a government program."

Section 2. Section 40-6-703, MCA, is amended to read:

"40-6-703. Parental involvement in education. (1) The board of trustees of a school district, in consultation with parents, teachers, and administrators, shall develop and adopt a policy to promote the involvement of parents of children enrolled in the school district, including:

(a) a plan for parent participation in the school district, which must be designed to improve parent and teacher cooperation in homework, attendance, and discipline;

(b) a plan to provide parents with information about how to participate in the governance of the school district through the locally elected board of trustees;

(c) procedures by which a parent may learn about the course of study for the parent's child;

(d) procedures by which a parent may withdraw the parent's child from instruction or presentations, assemblies, guest lectures, or other educational events facilitated by a school's faculty or staff, including those conducted by outside individuals or organizations, that offend the parent's beliefs or practices;

(e) procedures by which a parent may learn about the nature and purpose of clubs and extracurricular activities that have been approved by the school or that the school is required to allow under the provisions of the federal Equal Access Act of 1984 and may withdraw the parent's child from any club or extracurricular activity. A student shall provide a signed parental permission form prior to participating in any school-sponsored club or extracurricular activity.

(f) procedures by which a parent shall provide written consent before the parent's child uses a pronoun that does not align with the child's sex. If a parent provides written consent under this subsection (1)(f), a person may not be compelled to use pronouns that do not align with the child's sex.

(g) procedures by which a parent may learn about parental rights and responsibilities under the laws of this state.

1 (2) The board of trustees of a school district shall develop and adopt a policy to ensure that
2 parents have full access to information relating to their children who are enrolled in the school district, including:
3 (a) requirements that a district employee may not withhold or conceal information from or facilitate,
4 encourage, or coerce a child to withhold or conceal information from the child's parents about the child's:
5 (i) educational records;
6 (ii) curricular or extracurricular projects, assignments, or activities;
7 (iii) physical, emotional, or mental health; or
8 (iv) purported gender identity or requests to be treated as the opposite sex;
9 (b) requirements that school district employees may not be subject to disciplinary action or adverse
10 employment action for informing a child's parent of any information regarding the child that the employee
11 reasonably believes the parent should know;
12 (c) procedures to notify a parent at least 5 days in advance and obtain the parent's consent before
13 the parent's child attends an instruction or presentation that has the goal or purpose of studying, exploring, or
14 informing students about gender roles or stereotypes, gender identity, gender expression, or sexual orientation;
15 and
16 (d) procedures by which a parent who objects to a specific instruction or presentation on the basis
17 that it is harmful may withdraw the parent's child from the instruction or presentation. Objection to a specific
18 instruction or presentation on the basis that it is harmful includes but is not limited to an objection to a material
19 or activity because it questions beliefs or practices regarding sex, morality, or religion.
20 (2)(3) The board of trustees of a school district may adopt a policy providing that parents may submit
21 and receive the information required by this section in electronic form.
22 (4) The board of trustees of a school district shall develop and adopt a policy that allows a parent
23 to submit a complaint asserting a violation of this section, including:
24 (a) procedures by which the district superintendent or a designated committee shall investigate a
25 complaint;
26 (b) requirements that the district superintendent or a designated committee respond in writing
27 within 30-14 days of receiving a parent's complaint and describe the action that will be taken to remedy the
28 complaint; and

(c) procedures by which a parent may appeal the decision of the district superintendent or designated committee to the board of trustees; AND

(D) REQUIREMENTS THAT THE BOARD OF TRUSTEES APPOINT A COMMITTEE TO INVESTIGATE A PARENT'S APPEAL UNDER SUBSECTION (4)(C). THE COMMITTEE SHALL MEET WITH THE PARENT TO DISCUSS THE PARENT'S COMPLAINT. WITHIN 30 DAYS OF RECEIVING THE APPEAL, THE COMMITTEE SHALL SUBMIT A RECOMMENDED RESPONSE AND PROPOSED STEPS TO REMEDY THE COMPLAINT TO THE FULL BOARD OF TRUSTEES. THE BOARD OF TRUSTEES SHALL TAKE ACTION ON THE COMMITTEE'S RECOMMENDATION WITHIN 30 DAYS OF RECEIPT OF THE RECOMMENDATION OR AT THE NEXT REGULARLY SCHEDULED BOARD MEETING, WHICHEVER IS EARLIEST.

(5) Nothing in this section precludes ~~an individual~~ A PARENT from filing a suit asserting a violation of this section or any other claim allowed by law. ~~Nothing in this section requires exhaustion of the other remedies under this section prior to filing a suit.~~ An individual A PARENT who, AFTER EXHAUSTING THE ADMINISTRATIVE REMEDIES UNDER SUBSECTION (4), successfully asserts a claim under this section is entitled to the remedies available under 40-6-701(5).

(6) The attorney general, superintendent of public instruction, or county attorney for the county in which an alleged violation of this section occurs may file suit and assert a violation of this section as a claim against the school district."

Section 3. Section 40-6-707, MCA, is amended to read:

"40-6-707. Construction. (1) Unless a right has been legally waived or legally terminated, a parent has inalienable rights that are more comprehensive than those listed in 40-6-701, 40-6-702, 40-6-703, 41-1-402, 41-1-403, 41-1-405, and this section. The protections afforded by 40-6-701, 40-6-702, 40-6-703, 41-1-402, 41-1-403, 41-1-405, and this section are in addition to the protections provided by the constitutions of the United States and the state of Montana and by federal and state law.

(2) Sections 40-6-701, 40-6-702, 40-6-703, 41-1-402, 41-1-403, 41-1-405, and this section must be construed in favor of a broad protection of the fundamental right of parents to direct the upbringing, education, health care, and mental health of their child.

(3) Sections 40-6-701, 40-6-702, 40-6-703, 41-1-402, 41-1-403, 41-1-405, and this section may not be construed to authorize any government entity to burden the fundamental right of parents to direct the

1 upbringing, education, health care, and mental health of their child.

2 (4) If a child has no affirmative right of access to a particular medical or mental health procedure or
3 service, then nothing in 40-6-701, 40-6-702, 40-6-703, 41-1-402, 41-1-403, 41-1-405, and this section may be
4 construed to grant the child's parent an affirmative right of access to the procedure or service on the child's
5 behalf."

6

7 NEW SECTION. Section 4. Repealer. The following section of the Montana Code Annotated is
8 repealed:

9 40-6-708. Construction.

10

11 NEW SECTION. Section 5. Effective date. [This act] is effective July 1, 2025.

12

- END -