



This Bill Analysis reflects the contents of the bill as it was presented in committee

# SENATE BILL 49: Parents' Bill of Rights.

2023-2024 General Assembly

<b>Committee:</b>	House Education - K-12. If favorable, re-refer to Rules, Calendar, and Operations of the House	<b>Date:</b>	June 21, 2023
<b>Introduced by:</b>	Sens. Galey, Lee, Barnes	<b>Prepared by:</b>	Kara McCraw
<b>Analysis of:</b>	PCS to First Edition S49-CSTC-48		Staff Attorney

### OVERVIEW: SB 49 would do the following:

- Establish a Parents' Bill of Rights enumerating certain rights of parents related to the education, health, privacy, and safety of their child.
- Require public school units to provide parents with information related to parental involvement in schools, legal rights for their child's education, and guides for student achievement.
- Require public school units to provide notifications on student physical and mental health, require age-appropriate instruction on certain topics in kindergarten – 4th grade, and create remedies for parents to address concerns over implementation of these requirements.
- Require health care practitioners to obtain written consent from the parent of a minor child before providing treatment.

The PCS for SB 49 would make organizational, technical, and conforming changes, as well as the following substantive changes:

- Exempt security recordings on school transportation from the prohibition on government recordings of minors without parental consent.
- For purposes of parental consent for the health care of a minor, define parent as a parent, guardian, or person standing in loco parentis. In loco parentis is defined as a person who has assumed parental responsibilities including support and maintenance of the minor.
- Allow parental consent for minor health care to be documented as well as given in writing.

### PART I: PARENTS' BILL OF RIGHTS

**CURRENT LAW:** Current State and federal law provides rights and obligations for parents with regard to the care and upbringing of their minor children, including the following:

- Compulsory education attendance requirements, satisfied by attendance at a public, nonpublic, or home school. (Article 26 of Chapter 115C)
- Access to student educational records and the right to opt-out of certain surveys (Article 29 of Chapter 115C, the federal Family Educational Rights and Privacy Act, 20 U.S.C. 1232g (FERPA), and the Protection of Pupil Rights Amendment, 20 U.S.C. § 1232h)

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- Review of health care records (federal Health Insurance Portability and Accountability Act of 1996 (HIPAA))
- Limitations on the circumstances in which minors may consent to treatment, and limited circumstances in which physicians may treat a minor without parental consent. (Article 1A of Chapter 90)
- Limitations on the collection of a student's biometric data in a school student data system. (G.S. 115C-402.5)
- Notification by a local board of education to parents if child is suspected victim of certain crimes. (G.S. 115C-47(56))

**BILL ANALYSIS:** Part I of SB 49 would create a new Chapter enumerating the following rights for parents of their child:

- Direction of the child's education, care, upbringing, and moral or religious training.
- Selection of qualifying school to comply with compulsory attendance laws.
- Access and review student education records under FERPA.
- Make health care decisions, unless otherwise provided by law.
- Access and review medical records under HIPAA, unless the parent is the subject of an investigation for a crime committed against the child or an abuse and neglect investigation against the child and the investigator requests the information not be released to the parent.
- Prohibit the creation, sharing, or storage of biometric scans, blood, or DNA without written consent, unless authorized by a court order or for a juvenile in custody of law enforcement.
- Prohibit the creation by a State, political subdivision, or public school unit of a video or voice recording without prior written consent, except in court proceedings, criminal or abuse and neglect investigations, safety demonstrations, academic or extracurricular activities, classroom instruction, photo identification cards, or security or surveillance.
- Prompt notification if a State, political subdivision, or public school unit employee suspects a criminal offense has been committed against his or her child, unless reporting the incident would impede a criminal or child welfare investigation.

The new Article clarifies that the parental rights do not (i) authorize parents to engage in unlawful conduct or abuse or neglect their child, (ii) or prohibit State, political subdivision, or public school unit employees, and courts from acting in the official capacities.

The new Article would establish that a State, political subdivision, or public school unit employee that encouraged or coerced a child to withhold information from the child's parent could be subject to disciplinary action.

## **PART II. PARENTAL GUIDES AND NOTIFICATIONS**

**CURRENT LAW:** Current State and federal law provides for certain information and opportunities to be provided to parents, including the following:

- Decisions for participation in reproductive health and safety education programs. (G.S. 115C-81.30)
- Medical or religious exemptions from immunization requirements. (G.S. 130A-156 and G.S. 130A-157)
- Evaluations of their child for identification as a child with a disability. (Article 9 of Chapter 115C and federal Individuals with Disabilities Education Act, 20 U.S.C. 1400 (IDEA))

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- Purchase of textbooks and other supplementary instructional materials. (G.S. 115C-102)
- Access to information on the State public education system and local school. (G.S. 115C-47(58) and Article 8B of Chapter 115C)
- Opt-out opportunities for data collection on certain types of surveys. (G.S. 115C-402.15)
- Information on promotion requirements for 3rd grade students and supports for reading development (Part 1A of Article 8 of Chapter 115C)
- Policies to increase parental involvement. (G.S. 115C-47(54))
- Encouragement to eligible secondary students to enroll in rigorous coursework. (G.S. 115C-174.26)

**BILL ANALYSIS:** SB 49 would establish a new Article in Chapter 115C that would require public school units to establish policies and provide information to involve parents in their child's education as follows:

- **Parents' Legal Rights** - Display and inform parent of legal rights, including the right to:
  - Make decisions for participation in reproductive health and safety education programs.
  - Seek exemptions from immunization requirements.
  - Review statewide standardized assessment results.
  - Request an evaluation of their child for identification as a child with a disability or as academically or intellectually gifted.
  - Inspect and purchase textbooks and other supplementary instructional materials.
  - Access information on promotion and retention, including high school graduation requirements.
  - Receive regular report cards that show academic performance, conduct, and attendance.
  - Access information on the State public education system.
  - Participate in parent-teacher organizations.
  - Opt-in to participation in protected student information surveys in accordance with State law and opt-out of data collection in other surveys in accordance with federal law.
  - Review available records of materials their child borrowed from a school library.
- **Parents' Guide to Student Achievement** - Based on minimum standards established by the State Board of Education, provide the following information on educational progress and how to help their child succeed in school at the beginning of each school year, including:
  - Promotion requirements.
  - Course of study, textbooks, and other instructional materials for their child.
  - Their child's progress towards achieving academic proficiency.
  - Qualifications of their child's teachers, including licensure status.
  - School entry requirements, including immunizations.
  - Parental actions that can strengthen the child's academic progress, citizenship skills, realization of high expectations and goal-setting, and communication between school and home.
  - Services available for parents and their child, such as tutoring, mentoring, and advising.
  - Opportunities for parental participation in schools.
  - Opportunities for the parent's child to participate in rigorous academic programs.
  - Educational choices available to parents, including types of public school units, nonpublic schools, choices within public schools, and scholarship grant programs.
  - Rights of students with disabilities.
  - Contact information for the school and public school unit offices.

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- Resources for student health, including immunization information.
- **Public School Unit Policies on Parental Involvement** – Adopt specific policies on how to involve parents in schools, including:
  - Links to community services.
  - Opportunities for parental involvement in family involvement programs, student advisory councils, school volunteer programs, and other activities.
  - Improving parent and teacher cooperation in the child's education.
  - Requiring effective communication by principals on use of textbooks.
  - Establishing procedures for parents to:
    - Learn about the course of study, textbooks, and supplementary instructional materials that will be used in their child's classroom.
    - Object to textbooks and supplementary materials.
    - Review materials and make decisions for participation in reproductive health and safety education programs.
    - Learn about curricular and extracurricular activities and clubs at the school.
- **Parental Requests for Information** - The bill would establish a timeline for parents to request and receive any information required to be provided related to parental involvement in schools and would direct governing bodies to establish procedures for requesting information and an appeals process. If the parent has not received the information from the principal within 20 days or received notice that the request will be fulfilled within 10 days, the parent could request the information from the superintendent. If information is not received from the superintendent within 20 days, the information could be requested from the governing body and must be placed on the agenda at the next meeting occurring more than 3 business days after the appeal. The governing body's decision is final.
- **Student Physical and Mental Health** - SB 49 would require notifications related to student physical and mental health and create other restrictions as follows:
  - Public school units must notify parents regarding each of the following:
    - Health care services offered at the school and the right to consent to such services.
    - At the beginning of each school year, remedies for parental concerns.
    - For students in kindergarten through third grade, copies of any student well-being questionnaire or health screening form in advance and means to consent to use.
    - Prior to or contemporaneous with changes, notice of changes in services or monitoring of the child's mental, emotional, or physical health or well-being and the school's ability to provide a safe and supportive learning environment.
    - Prior to changes in the name or pronoun used for a student in school records or by school personnel, notice to the parent of the change.
  - Public school units would require school personnel to encourage children to discuss their well-being with parents and facilitate discussions of issues with parents.
  - Parents cannot be limited in access to education and health records, except when the parent is the subject of a criminal or abuse and neglect investigation or when a reasonably prudent person would believe disclosure would result in the child becoming an abused or neglected juvenile.
  - Public school units could not adopt forms or procedures that prohibited employees from notifying parents about a child's health or well-being or a change in services or monitoring, or that encouraged

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a child to withhold health or well-being information or changes in services or monitoring from the parent.

- Instruction on gender identity, sexual activity, and sexuality would not be permitted in the curriculum provided in kindergarten through fourth grade.
- Governing bodies would be required to adopt procedures to address concerns about procedures or practices under this Part and a process for resolving concerns within 7 days of notification. If the concern is unresolved after 30 days, the public school unit would provide a statement of reasons for lack of resolution. A parent could then either:
  - Request a parental concern hearing before the State Board of Education, and have the matter reviewed by a hearing officer who would recommend a decision to the State Board of Education.
  - Bring a declaratory judgment action for injunctive relief.
- The Department of Public Instruction would develop student services guidelines, standards, and frameworks by June 30, 2024, and all student support services training for school personnel would be required to adhere to those requirements.
- **Protected Information Surveys** – The bill would require parental review and affirmative consent prior to administration of a protected information survey to a child by a public school unit. A protected information survey would cover any of the following topics:
  - Political affiliations or beliefs.
  - Mental or psychological problems.
  - Sex behavior or attitudes.
  - Illegal, anti-social, self-incriminating, or demeaning behavior.
  - Critical appraisals of close family relationships.
  - Legally recognized or similar privileged relationships.
  - Religious practices, affiliations, or beliefs.
  - Income, except eligibility and financial assistance determinations.
- **Reporting Requirements** – The bill would require annual reporting to the State Board of Education and the Joint Legislative Education Oversight Committee on implementation and enforcement measures for the new Article.

**EFFECTIVE DATE:** This section would become effective when it became law, and apply beginning with the 2023-2024 school year.

## **PART III: PARENTAL AUTHORIZATION FOR HEALTH CARE OF MINORS**

**CURRENT LAW:** Article 1A of Chapter 90 governs treatment of minors. Physicians may treat a minor without parental consent in the following circumstances:

- The parent cannot be located during the time the minor needs to receive treatment.
- The child's identity is unknown.
- The necessity for immediate treatment is so apparent that efforts to secure approval would delay treatment and endanger the life of the child.
- Efforts to contact the parent would result in a delay that would seriously worsen the physical condition of the child.
- The parent refuses to consent to a procedure, and the necessity for immediate treatment is so apparent that the delay required to obtain a court order would endanger the life or seriously worsen

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the physical condition of the child, and two physicians agree that the procedure is necessary to prevent immediate harm to the child.

The refusal of a physician to treat as minor without parental consent is not grounds for a civil action or criminal proceedings against the physician. A physician who treats a minor without parental consent as provided in this Article is not liable in any civil or criminal action for failure to obtain permission.

Minors may consent to medical health services for the prevention, diagnosis, and treatment of certain medical conditions, substance abuse, and emotional disturbances. The physician is not allowed to notify the parents without the permission of the minor concerning those medical services unless the physician determines notification is essential to the life or health of the minor. If a parent contacts the physician concerning the treatment or medical services being provided to the minor, the physician may give information.

**BILL ANALYSIS:** SB 49 would create a new Part in Article 1A of Chapter 90 to prohibit health care practitioners from providing, soliciting, or arranging treatment for minors without first obtaining written or documented consent from parents, except as otherwise provided in the Article. Health care facilities would also be prohibited from allowing treatment of minors without written or documented consent from parents. Violations of the section by a health care practitioner would be subject to disciplinary action by the governing licensure board, including a fine of up to \$5,000.

**EFFECTIVE DATE:** This Part would become effective December 1, 2023, and apply to violations occurring on or after that date.

**BILL EFFECTIVE DATE:** Except as otherwise provided, SB 49 would become effective July 1, 2023.