



## Protection of Pupil Rights Amendment (PPRA) and Utah Family Educational Rights and Privacy Act

*This law is based on the legal and societal premise that the family is the foundation of American culture and basic to the well being of our nation.*

After taking notice of what were perceived as abuses of family privacy and parental autonomy by some educators, and following a pattern established under federal law since 1978 (PPRA), the Utah Legislature adopted, in 1994, a state law designed to ensure that family privacy and parents' involvement in their children's education would be respected in all aspects of the public school curricula and activities.

### What rights do these laws afford parents?

A District employee must have **obtain prior written consent** from a student's parent if the employee plans to administer any psychological or psychiatric examination, test, treatment, or any survey, analysis or evaluation that has the purpose or evident intended effect of causing the student to reveal information, whether the information is personally identifiable or not, concerning the student's or any family member's:

- political affiliations or, except as provided under UCA §53A-13-101.1 or rules of the Utah State Board of Education, political philosophies;
- mental or psychological problems;
- sexual behavior, orientation, or attitudes;
- illegal, anti-social, self-incriminating, or demeaning behavior;
- critical appraisals of individuals with whom the student or family member has close family relationships;
- religious affiliations or beliefs;
- legally recognized privileged and analogous relationships, such as those with lawyers, medical personnel, or ministers; and
- income, except as required by law.

The prohibitions above also apply within the curriculum and other school activities unless prior written consent is obtained.

### When must a parent be notified?

At least two weeks before the test/treatment/survey/analysis/evaluation is administered or information listed above is sought, unless the parent chooses to waive the two-week minimum notification period.

### Why is time allowed for parental decision making regarding these matters?

Parents and families of students have protected privacy rights in the public education setting. It is reasonable for parents to have adequate time to make important decisions. Parents may wish to contact the school employee to discuss proposed curriculum, assignments, or testing or alternatives to the objectionable activity. Therefore, the waiting period provided in FERPA is a reasonable accommodation to parents. Written parental consent is valid only if the parent has been given notice and a reasonable opportunity to obtain written information regarding:

- the information and relationships that will be examined or requested;
- how the records or information will be examined or reviewed;
- the means by which the information will be obtained;
- the purposes for which the records or information are needed;
- the entities or persons (public or private) who will have access to the personally identifiable information; and
- how a parent can give permission to access or examine the personally identifiable information.

Once consent is given for an activity, can a parent change his or her mind?

Yes. Unless otherwise agreed to by a student's parent and the person requesting written consent, the authorization is valid only for the activity for which it was granted, or until the parent withdraws consent by submitting a written withdrawal of authorization to the school principal, during the course of the activity.

What does a school employee do if parental consent notice is sent and a parent does not respond in a timely manner?

The law requires a response from the parent before the student can participate in discussion of protected areas or subject matter. The student would have to be excluded until the parent responds.

What about asking for protected information through anonymous surveys or other inquiries where the student is not identified on the response?

The legislation specifically applies "whether the information is personally identifiable or not."

What happens if a student voluntarily discloses something that is protected?

Under the statute, the key word is not *voluntarily*; the key word is *spontaneously*. While the act specifically exempts spontaneous expression, the use of any part of the curriculum or school activity "in which the purpose or evident intended effect is to cause the student to reveal" prohibited information is not allowed. Nothing in the act was intended to restrict the right of a student to exercise "free speech" and related rights allowed by other state legislation.

What happens when we have an emergency, child abuse problem, or some other challenge that requires us to act before we can talk to parents and get their written consent to make inquiries of a student regarding their parents, medical needs, or conduct at home?

The statute specifically exempts those school employees who are responding to a situation that they "reasonably believe to be an emergency" or who are acting in compliance with state child abuse reporting laws or a court order. There are other narrow exceptions to the parental consent requirement in both the state and federal laws.

What happens if a child is in serious trouble because of what seems to be an abusive parent or family member?

State law and State Board of Education rules provide that "when any person. . .has reason to believe that a child has been subjected to" this situation, he/she "shall immediately notify the nearest peace officer, law enforcement agency, or office of the State Division of Child and Family Services (DCFS)."

Should a school employee notify a parent if a child is in danger?

Yes. When a school employee believes that "a situation exists which presents a serious threat to the well-being of the student," the employee is directed to "notify the student's parent or guardian without delay." However, when the matter has been reported to DCFS, it is the responsibility of the Division to notify the student's parent or guardian of any possible investigation or take other appropriate action.

What would be some examples of student behavior that could constitute a "serious threat to the well-being of a student" that was not the result of child abuse?

Examples could include abusing drugs or illegal contraband, promiscuous sexual activity, attempted suicide, or involvement in criminal or delinquent conduct.

Sources: 20 U.S.C § 1232h - Protection of Pupil Rights Amendment; Utah Code Ann. § 53A-13-302 Utah Educational Rights and Privacy Act; *Utah Education Rights and Privacy Act* (USOE); District Policy 11IR-110 Family Educational Rights and Privacy