



## 2021 SENATE BILL 962

February 9, 2022 - Introduced by Senators DARLING, ROTH, NASS and WANGGAARD, cosponsored by Representatives GUNDRUM, THIESFELDT, WITTKE, BRANDTJEN, KNODL, MACCO, MAGNAFICI, MOSES, MURPHY, PENTERMAN, ROZAR, STEFFEN and VORPAGEL. Referred to Committee on Education.

- 1     **AN ACT to create** 48.9865 of the statutes; **relating to:** rights reserved to a parent  
2           or guardian of a child.

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### *Analysis by the Legislative Reference Bureau*

This bill establishes a legal standard for state infringement on fundamental rights of parents and guardians, explicitly establishes a number of parental and guardian rights relating to a child's religion, medical care and records, and education, and creates a cause of action for the violation of these rights.

The bill prohibits the state from infringing on the fundamental right of parents to direct the upbringing, education, health care, and mental health of their children without demonstrating that the infringement is required by a compelling governmental interest of the highest order as applied to the child, is narrowly tailored, and is not otherwise served by a less restrictive means.

The bill reserves all of the following rights to the parent of a child without interference from the state or other government entity:

1. The right to determine the religion of the child.
2. The right to determine the type of school or educational setting the child attends.
3. The right to determine medical care for the child, unless specified otherwise in law or court order.
4. The right to review all medical records related to the child, unless specified otherwise in law or court order.
5. The right to determine the names and pronouns used for the child while at school.

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6. The right to review instructional materials and outlines used by the child's school.
7. The right to access any education-related information regarding the child.
8. The right to advanced notice of any polls or surveys instituted by the child's classroom.
9. The right to request notice of when certain subjects will be taught or discussed in the child's classroom.
10. The right to opt out of a class or instructional materials for reasons based on either religion or personal conviction.
11. The right to visit the child at school during school hours, consistent with school policy, unless otherwise specified in law or court order.
12. The right to engage with locally elected school board members of the school district in which the child is a student, including participating at regularly scheduled school board meetings.
13. The right to be notified of the creation of or updates to a security or surveillance system at the child's school.
14. The right to be informed of any disciplinary action taken against or threatened against the child.
15. The right to be timely informed of any acts of violence or crimes occurring on grounds of the child's school.

The bill also provides that a guardian has all of the rights listed in the bill, unless they are limited by law or court order.

The bill provides that this list does not comprehensively prescribe all inalienable parental rights, and that a child's guardian may have rights that are more comprehensive than those listed.

The bill allows a parent or guardian to bring a suit against a governmental body or official based on any violation of these rights or any other action that interferes with or usurps the fundamental right of a parent or guardian to direct the upbringing, education, health care, and mental health of a child. The bill allows a parent or guardian to raise a violation of these rights in court or before an administrative tribunal of appropriate jurisdiction as a claim or defense. Under the bill, a parent or guardian that successfully asserts such a claim may recover declaratory relief, injunctive relief, reasonable attorney's fees and costs, and any other appropriate relief. The bill also authorizes the attorney general to enforce these rights.

The bill provides that nothing in the bill authorizes a parent or guardian to abuse or neglect a child in violation of state law, and it may not be construed to apply to a parent's or guardian's action or decision that would end life. The bill also provides that nothing in the bill prohibits a court from issuing an order that is otherwise permitted by law.

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***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***

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1           **SECTION 1.** 48.9865 of the statutes is created to read:

2           **48.9865 Rights reserved to parents. (1)** This state may not infringe on the  
3 fundamental right of parents to direct the upbringing, education, health care, and  
4 mental health of their children without demonstrating that the infringement is  
5 required by a compelling governmental interest of the highest order as applied to the  
6 child, is narrowly tailored, and is not otherwise served by a less restrictive means.  
7 The rights enumerated in this section are in addition to rights granted to parents  
8 under the constitutions of this state and of the United States.

9           **(2)** All of the following rights are reserved to the parent of a child without  
10 interference from the state or other government entity:

11           (a) The right to determine the religion of the child.

12           (b) The right to determine the type of school or educational setting the child  
13 attends.

14           (c) The right to determine medical care for the child, unless specified otherwise  
15 in law or court order.

16           (d) The right to review all medical records related to the child, unless specified  
17 otherwise in law or court order.

18           (e) The right to determine the names and pronouns used for the child while at  
19 school.

20           (f) The right to review instructional materials and outlines used by the child's  
21 school.

22           (g) The right to access any education-related information regarding the child.

23           (h) The right to advanced notice of any polls or surveys instituted by the child's  
24 classroom.

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1 (i) The right to request notice of when certain subjects will be taught or  
2 discussed in the child's classroom.

3 (j) The right to opt out of a class or instructional materials for reasons based  
4 on either religion or personal conviction.

5 (k) The right to visit the child at school during school hours, consistent with  
6 school policy, unless otherwise specified in law or court order.

7 (L) The right to engage with locally elected school board members of the school  
8 district in which the child is a student, including participating at regularly scheduled  
9 school board meetings.

10 (m) The right to be notified of the creation of or updates to a security or  
11 surveillance system at the child's school.

12 (n) The right to be informed of any disciplinary action taken against or  
13 threatened against the child.

14 (o) The right to be timely informed of any acts of violence or crimes occurring  
15 on grounds of the child's school.

16 **(3)** Except as limited by other law or court order, a guardian of a child has the  
17 same rights specified under subs. (1) and (2).

18 **(4)** Nothing in this section authorizes a parent or guardian to abuse or neglect  
19 a child in violation of the laws of this state. This section shall not be construed to  
20 apply to a parent's or guardian's action or decision that would end life. Nothing in  
21 this section prohibits a court from issuing an order that is otherwise permitted by  
22 law.

23 **(5)** A parent or guardian may bring a suit against a governmental body or  
24 official based on any violation of the rights set forth in this section or on any other  
25 action that interferes with or usurps the fundamental right of a parent or guardian

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1 to direct the upbringing, education, health care, and mental health of a child. A  
2 parent or guardian may raise a violation of this section in court or before an  
3 administrative tribunal of appropriate jurisdiction as a claim or defense. A parent  
4 or guardian who successfully asserts a claim under this subsection may recover  
5 declaratory relief, injunctive relief, reasonable attorney's fees and costs  
6 notwithstanding s. 814.04(1), and any other appropriate relief.

7 (6) The attorney general is authorized to enforce this section.

8 (7) A parent of a child in this state has inalienable rights that are more  
9 comprehensive than those listed in this section, unless such rights have been legally  
10 waived or terminated. A guardian of a child in this state may have rights that are  
11 more comprehensive than those listed in this section.

12 (END)