



2023 SENATE BILL 489

October 16, 2023 - Introduced by Senators WANGGAARD, QUINN, MARKLEIN and NASS, cosponsored by Representatives WITTKKE, GUNDRUM, MAXEY, NEDWESKI, SCHMIDT, BINSFELD, RETTINGER, ALLEN, MAGNAFICI, STEFFEN, BROOKS, ARMSTRONG, CALLAHAN, O'CONNOR, GOEBEN, BODDEN, SAPIK, TITTL, MICHALSKI, SCHUTT, PENTERMAN, DITTRICH, MURPHY, GREEN, BEHNKE, MURSAU, BRANDTJEN, WICHGERS, VANDERMEER and EDMING. 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.

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 be notified of each health care service, including vaccinations or immunizations, offered at the child's school and the right to withhold consent or decline any specific service, unless otherwise specified by law or court order.
4. The right to review all medical records related to the child, unless otherwise specified by 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, to the extent required by federal law.

7. The right to access records regarding the education of the child that are generated, maintained, or used by the child's school, to the extent required by federal law.

8. The right to timely notice by the child's school of any surveys or evaluations conducted in the child's classroom that would reveal information concerning any of the following about the child or his or her parent or family members: political affiliations or beliefs; mental or psychological problems; sexual behavior or attitudes; illegal, antisocial, self-incriminating, or demeaning behavior; critical appraisals of individuals with whom the child or parent has a close family relationship; relationships that are legally recognized as privileged, such as those with lawyers, physicians, and ministers; religious practices, affiliations, or beliefs; or income, unless otherwise specified by law.

9. The right to timely notice by the child's school, through a process consistent with school policy, of when a controversial subject will be taught or discussed in the child's classroom. The bill defines "controversial subject" as a subject of substantial public debate, disagreement, or disapproval and specifies that the term includes instruction about gender identity, sexual orientation, racial identity, structural, systemic, or institutional racism, or content that is not age-appropriate.

10. The right to opt out of a class or instructional materials at the child's school 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 by 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 in accordance with school district policy, including by 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, not including routine maintenance.

14. The right to be informed by the child's school, in accordance with school policy, of any disciplinary action taken against the child. This includes suspension, expulsion, seclusion, physical restraint, or removal from class.

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

16. The right to receive accurate and individual information from the child's school at least two times per year regarding the academic proficiency and classroom behavior of the child.

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 requires a school board to adopt a policy setting forth a process by which a parent or guardian of a pupil enrolled in the school district may file a written complaint alleging that a right identified in the bill was violated. Under the bill, this

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policy must require the school board to hold a public hearing to address any such written complaints at least once every three months. The bill also requires that the process be timely, that it grant the school board the final decision, and that it allow a clear process to appeal that decision.

The bill also allows a parent or guardian who is denied one of the rights identified in the bill to bring a civil action against a governmental body or official. 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 up to \$10,000 for any other appropriate relief.

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 that 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 and that it may not be construed to supersede a court order.

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

- 1 **SECTION 1.** 48.9865 of the statutes is created to read:
- 2 **48.9865 Rights reserved to parents.** (1) In this section:
- 3 (a) "Controversial subject" means a subject of substantial public debate,
- 4 disagreement, or disapproval and includes instruction about gender identity, sexual
- 5 orientation, racial identity, structural, systemic, or institutional racism, or content
- 6 that is not age-appropriate, as defined in s. 118.019 (1m) (a).
- 7 (b) "School board" has the meaning given in s. 115.001 (7).
- 8 (c) "Timely notice" means written notice provided to a parent or guardian
- 9 through a process consistent with school policy such that the parent or guardian may
- 10 effectively exercise the rights set forth under this section.
- 11 (2) This state may not infringe on the fundamental right of parents to direct
- 12 the upbringing, education, health care, and mental health of their children without
- 13 demonstrating that the infringement is required by a compelling governmental

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1 interest of the highest order as applied to the child, is narrowly tailored, and is not
2 otherwise served by a less restrictive means. The rights enumerated in this section
3 are in addition to rights granted to parents under the constitutions of this state and
4 of the United States.

5 (3) All of the following rights are reserved to the parent of a child without
6 interference from the state or other government entity:

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

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

10 (c) The right to be notified of each health care service, including vaccinations
11 or immunizations, offered at the child's school and the right to withhold consent or
12 decline any specific service, unless otherwise specified by law or court order.

13 (d) The right to review all medical records related to the child, unless otherwise
14 specified by law or court order.

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

17 (f) The right to review instructional materials and outlines used by the child's
18 school, to the extent required by federal law.

19 (g) The right to access records regarding the education of the child that are
20 generated, maintained, or used by the child's school, to the extent required by federal
21 law.

22 (h) The right to timely notice by the child's school of any surveys or evaluations
23 conducted in the child's classroom that would reveal information concerning any of
24 the following about the child or his or her parent or family members:

25 1. Political affiliations or beliefs.

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- 1 2. Mental or psychological problems.
- 2 3. Sexual behavior or attitudes.
- 3 4. Illegal, antisocial, self-incriminating, or demeaning behavior.
- 4 5. Critical appraisals of individuals with whom the child or parent has a close
- 5 family relationship.
- 6 6. Relationships that are legally recognized as privileged, such as those with
- 7 lawyers, physicians, and ministers.
- 8 7. Religious practices, affiliations, or beliefs.
- 9 8. Income, unless otherwise specified by law.
- 10 (i) The right to timely notice by the child's school, through a process consistent
- 11 with school policy, of when a controversial subject will be taught or discussed in the
- 12 child's classroom.
- 13 (j) The right to opt out of a class or instructional materials at the child's school
- 14 for reasons based on either religion or personal conviction.
- 15 (k) The right to visit the child at school during school hours, consistent with
- 16 school policy, unless otherwise specified by law or court order.
- 17 (L) The right to engage with locally elected school board members of the school
- 18 district in which the child is a student in accordance with school district policy,
- 19 including by participating at regularly scheduled school board meetings.
- 20 (m) The right to be notified of the creation of or updates to a security or
- 21 surveillance system at the child's school, not including routine maintenance.
- 22 (n) The right to be informed by the child's school, in accordance with school
- 23 policy, of any disciplinary action taken against the child. This includes suspension,
- 24 expulsion, seclusion, physical restraint, or removal from class.

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

3 (p) The right to receive accurate and individual information from the child's
4 school at least 2 times per year regarding the academic proficiency and classroom
5 behavior of the child.

6 (4) Except as limited by other law or court order, a guardian of a child has the
7 rights specified under subs. (2) and (3).

8 (5) Nothing in this section authorizes a parent or guardian to abuse or neglect
9 a child in violation of the laws of this state. This section may not be construed to apply
10 to a parent's or guardian's action or decision that would end life. Nothing in this
11 section prohibits a court from issuing an order that is otherwise permitted by law.
12 This section may not be construed to supersede a court order.

13 (6) A school board shall adopt a policy setting forth a process by which a parent
14 or guardian of a pupil enrolled in the school district may file a written complaint
15 alleging that the parent's or guardian's rights under sub. (3) were violated. The
16 policy shall require the school board to hold a public hearing to address any written
17 complaints received under this subsection at least once every 3 months. The policy
18 shall establish this process to be timely, to grant the school board the final decision,
19 and to allow a clear process to appeal that decision.

20 (7) A parent or guardian who is denied one or more of the rights identified in
21 sub. (3) may do any of the following:

22 (a) File a written complaint as provided in the school board policy under sub.
23 (6), if applicable.

24 (b) Bring a civil action against a governmental body or official. A parent or
25 guardian may raise a violation of this section in court or before an administrative

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1 tribunal of appropriate jurisdiction as a claim or defense. A parent or guardian who
2 successfully asserts a claim under this subsection may recover declaratory relief,
3 injunctive relief, reasonable attorney's fees and costs notwithstanding s. 814.04 (1),
4 and no more than \$10,000 for any other appropriate relief.

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

9 (END)