

## HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

**BILL #:** CS/CS/HB 1069 Education

**SPONSOR(S):** Education & Employment Committee and Education Quality Subcommittee, McClain, Anderson and others

**TIED BILLS:** None. **IDEN./SIM. BILLS:** CS/SB 1320

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**FINAL HOUSE FLOOR ACTION:** 77 Y's

35 N's

**GOVERNOR'S ACTION:** Approved

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### SUMMARY ANALYSIS

CS/CS/HB 1069 passed the House on March 31, 2023, and subsequently passed the Senate on May 3, 2023. The bill includes portions of CS/HB 1223.

The bill continues Florida's efforts to increase transparency of a school district's instructional and specific materials adoption processes and empower parents control of their children's education. The bill increases school district transparency and accountability for selecting and using instructional materials and library materials by requiring that district school boards be responsible for the contents of classroom libraries, in addition to instructional materials and school libraries. As part of fulfilling this responsibility, district school board policies regarding objections to specific materials must allow objection on the basis that the material depicts or describes sexual conduct, as defined in law. The bill provides for an exception to this objection for material used in required instruction on HIV/AIDS, child sexual abuse prevention, or any other course identified by the DOE.

Any specific materials subject to an objection on the basis that the materials are pornographic, harmful to minors, or describe or depict sexual conduct must be removed from circulation at the school where the objection was made, within 5 days of the objection, until the completion of the objection process. Committees convened by a school district to review and make recommendations related to the adoption of instructional materials must include parents of students that will have access to the materials being reviewed. All meetings of such committees must be publicly noticed and open to the public. The bill creates an appeals process for a parent that disagrees with the school board's determination on his or her objection. The DOE must adopt an objection form for use by school districts.

All books in elementary school classroom libraries must be included in the required online catalogue of elementary school library materials and school districts must adopt and implement a process for parents to limit their child's access to library materials. The bill revises the annual reporting requirements regarding objections to materials.

The DOE must annually approve all instructional materials used to teach reproductive health and any disease, including HIV/AIDS. The bill defines "sex" for the purposes of the education code and requires that instruction in human sexuality include instruction on the binary, stable, and unchanging nature of biological sex.

The bill extends the existing prohibition on instruction relating to sexual orientation and gender identity in kindergarten through grade 3 to include prekindergarten through grade 8 and expressly states that charter schools must comply with this requirement. Consistent with existing law, instruction on sexual orientation and gender identity in grades 9 through 12 must be age-appropriate or developmentally appropriate for students. Additionally, the bill requires additional transparency regarding school district policies and procedures.

The bill implements new requirements relating to the use of personal titles and pronouns in Florida's public schools, with an exception for individuals with specified conditions. The bill prohibits an employee, contractor, or student, as a condition of employment, enrollment, or participation, at a public K-12 educational institution, be required to refer to another individual by a personal title or pronouns that do not align with the person's sex. Similarly, a K-12 public institution employee or contractor may not provide a student with the individual's preferred personal title or pronouns if they do not correspond to the employee or contractor's sex. A school may not require a student to provide his or her preferred personal title or pronouns and may not apply any penalty or adverse action against a student for not providing this information.

The bill does not appear to have a fiscal impact on state or local governments.

The bill was approved by the Governor on May 17, 2023, ch. 2023-105, L.O.F., and will become effective on July 1, 2023.

**This document does not reflect the intent or official position of the bill sponsor or House of Representatives.**

**STORAGE NAME:** h1069z.DOCX

**DATE:** 5/22/2023

## I. SUBSTANTIVE INFORMATION

### A. EFFECT OF CHANGES:

#### **Instructional and Specific Materials Review and Adoption**

##### Present Situation

##### *Instructional Materials Adoption*

Each district school board has the constitutional duty and responsibility to select and provide adequate instructional materials to each student for core courses in mathematics, language arts, science, social studies, reading, and literature for kindergarten through grade 12.<sup>1</sup> “Adequate instructional materials” are defined by law as a sufficient number of student or site licenses or sets of materials that are available in bound, unbound, kit, or package form and may consist of hardbacked or softbacked textbooks, electronic content, consumables, learning laboratories, manipulatives, electronic media, and computer courseware or software that serve as the basis for instruction for students.<sup>2</sup>

The Florida Department of Education (DOE) facilitates the instructional materials adoption process statewide through evaluation of materials submitted by publishers and manufacturers.<sup>3</sup> Expert reviewers chosen by the DOE must objectively evaluate materials based on alignment to Florida’s state-adopted standards, accuracy, and appropriateness for age and grade level.<sup>4</sup> Instructional materials selected by reviewers must:

- accurately portray the ethnic, socioeconomic, cultural, religious, physical, and racial diversity of our society, including men and women in professional, career, and executive roles, and the role and contributions of the entrepreneur and labor in the total development of this state and the United States;
- accurately portray humankind’s place in ecological systems, including the necessity for the protection of our environment and conservation of our natural resources and the effects on the human system of the use of tobacco, alcohol, controlled substances, and other dangerous substances;
- encourage thrift, fire prevention, and humane treatment of people and animals;
- contain the Declaration of Independence and the Constitution of the United States when appropriate to the comprehension of students for social science, history, or civics classes; and
- not contain any matter reflecting unfairly upon persons because of their race, color, creed, national origin, ancestry, gender, religion, disability, socioeconomic status, or occupation.<sup>5</sup>

Based on reviewer recommendations of materials that are “suitable, usable, and desirable,” the Commissioner of Education then selects and adopts instructional materials for each subject and grade under consideration.<sup>6</sup> The DOE must provide training to instructional materials reviewers on competencies for making valid, culturally sensitive, and objective recommendations prior to the reviewers beginning the review and selection process.<sup>7</sup>

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<sup>1</sup> See s. 1006.40(2), F.S.

<sup>2</sup> Section 1006.28(1), F.S. Digital and instructional materials, including software applications, must be provided by each school board, in consultation with the district school superintendent, to students with disabilities in prekindergarten through grade 12. Section 1003.4203(2), F.S.

<sup>3</sup> Section 1006.34(1), F.S. Effective November 2022, publishers must submit a Principles of Individual Freedom Assurance for Publishers form for all bid materials, assuring that the materials submitted for review are consistent with the enumerated principles of individual freedom. Section 1006.31(2)(d), F.S.

<sup>4</sup> Section 1006.31, F.S.

<sup>5</sup> Section 1006.31(2)(a)-(d), F.S.

<sup>6</sup> Section 1006.34(2)(a), F.S. Generally, the commissioner adopts instructional materials according to a 5-year rotating schedule. The commissioner may approve a shorter schedule if the content area requires more frequent revision. Section 1006.36(1), F.S.

<sup>7</sup> Section 1006.29(5), F.S.

After adoption, the DOE must make the final report of instructional materials available at all times for public inspection. The DOE Office of Instructional Materials announces the adoption by publicly posting the list on its website, as well as emailing district instructional materials contacts with the newly approved materials.<sup>8</sup>

School districts receive an allocation of state funds each year for instructional materials, library books, and reference books.<sup>9</sup> Unless a school district has implemented its own instructional materials review process,<sup>10</sup> at least 50 percent of the allocation of funds must be used to purchase instructional materials on the state-adopted list.<sup>11</sup> The remaining 50 percent of the annual allocation may be used for the purchase of library and reference books, nonprint materials, and the repair and renovation of materials; however, such materials are not subject to the same school-district adoption procedures as instructional materials.<sup>12</sup>

Each school district superintendent must annually, by July 1, certify to the Commissioner of Education that the district school board has approved a comprehensive staff development plan supporting fidelity of implementation of instructional materials programs. Certification includes verification that:<sup>13</sup>

- training was provided;
- materials are being implemented as designed; and
- core reading and reading intervention materials used in kindergarten through grade 5 meet minimum requirements.<sup>14</sup>

Each district school board must maintain a list of all purchased instructional materials, on its website.<sup>15</sup> Materials purchased, including instructional materials and library media and reference books, must be free of pornography and materials harmful to minors<sup>16</sup>; suited to student needs and their ability to comprehend the materials presented; and appropriate for the grade level and age group for which the materials are used or made available.<sup>17</sup>

Prior to the purchase of any instructional material, whether from the state-adopted list or through a district-established instructional materials review process, a district school board must:

- establish a process to allow student editions of recommended instructional materials to be accessed and viewed online by the public at least 20 calendar days before the required school board hearing and public meeting;
- conduct an open, noticed school board hearing to receive public comment on the recommended instructional materials;
- conduct an open, noticed public meeting, on another date, to approve an annual instructional materials plan to identify any instructional materials that will be purchased;
- provide notice for the school board hearing and the public meeting that specifically states the instructional materials being reviewed and how they can be accessed for public review; and
- establish a process for public review of, and comment on, the recommended instructional materials.<sup>18</sup>

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<sup>8</sup> Florida Department of Education, Instructional Materials, *Archive*, <https://www.fldoe.org/academics/standards/instructional-materials/archive/> (last visited Apr. 30, 2023). The DOE website archives all adopted instructional materials lists from 2005 to present.

<sup>9</sup> See s. 1011.67, F.S.

<sup>10</sup> See s. 1006.283, F.S.

<sup>11</sup> Section 1006.34, F.S. All adopted materials are posted on the DOE Instructional Materials webpage. Florida Department of Education, *Instructional Materials*, <https://www.fldoe.org/academics/standards/instructional-materials/> (last visited Apr. 30, 2023).

<sup>12</sup> See s. 1006.40(3)(b), F.S.

<sup>13</sup> Section 1011.67(2), F.S.

<sup>14</sup> See s. 1001.215(8), F.S. (requirements for reading programs are established by the Just Read, Florida! Office at DOE).

<sup>15</sup> Section 1006.28(2)(e), F.S.

<sup>16</sup> See s. 847.012, F.S.

<sup>17</sup> Section 1006.40(3)(d), F.S.

<sup>18</sup> Sections 1006.40(4)(b) and 1006.283(2)(b)8., 9., and 11., F.S.

As part of the adoption process, some school districts convene a committee composed of teachers and other stakeholders to provide a preliminary review of instructional materials and make recommendations to the district school board for adoption.<sup>19</sup> When a district school board delegates decision-making authority to an instructional materials review committee, any meeting in which the committee exercises the authority to rank, eliminate, or select materials for final approval by the school board it must be noticed and open in accordance with the Sunshine Law.<sup>20</sup>

### *Instructional Materials Related to Reproductive Health*

School districts must provide health education instruction to Florida's students.<sup>21</sup> This instruction must cover, among other topics, the prevention and control of disease, prevention of child sexual abuse, exploitation, and human trafficking, teen dating violence and abuse,<sup>22</sup> and the benefits of sexual abstinence and the consequences of teen pregnancy.<sup>23, 24</sup> Additionally, school districts may provide instruction in HIV/AIDS as part of their health education programs.<sup>25</sup> School districts must permit parents to exempt their children from instruction related to reproductive health and any disease, including HIV/AIDS.<sup>26</sup>

Throughout instruction in acquired immune deficiency syndrome, sexually transmitted diseases, or health education, when such instruction and course material contains instruction in human sexuality, a school must:

- Teach abstinence from sexual activity outside of marriage as the expected standard for all school-age students while teaching the benefits of monogamous heterosexual marriage.
- Emphasize that abstinence from sexual activity is a certain way to avoid out-of-wedlock pregnancy, sexually transmitted diseases, including acquired immune deficiency syndrome, and other associated health problems.
- Teach that each student has the power to control personal behavior and encourage students to base actions on reasoning, self-esteem, and respect for others.
- Provide instruction and material that is appropriate for the grade and age of the student.<sup>27</sup>

Instructional materials used to teach reproductive health and any disease, including HIV/AIDS, must be approved annually by the district school board in an open, noticed public meeting.<sup>28</sup> The instructional materials must be available through a link on the school district homepage for review by parents.<sup>29</sup> As the instruction in these topics occurs over a range of grades, instruction and materials used must always be appropriate for the grade and age of the student.<sup>30</sup>

### *Library Media and Other Materials*

In addition to instructional materials, each district school board is responsible for the content of any other materials used in the classroom, made available in a school library, or included on a reading list,

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<sup>19</sup> See The School District of Palm Beach County, *District Instructional Materials Guidelines for Selection Procedures*, available at [https://p14cdn4static.sharpschool.com/UserFiles/Servers/Server\\_270532/File/Students%20&%20Parents/Textbooks/Guidelines%20for%20District%20Adoptions.pdf](https://p14cdn4static.sharpschool.com/UserFiles/Servers/Server_270532/File/Students%20&%20Parents/Textbooks/Guidelines%20for%20District%20Adoptions.pdf).

<sup>20</sup> *Florida Citizens Alliance, Inc. v. School Bd. of Collier Cnty.*, 328 So.3d 22 (Fla. 2d DCA 2021). Florida's Sunshine Law is established in s. 286.011, F.S.

<sup>21</sup> Section 1003.42(2)(n), F.S.

<sup>22</sup> Instruction in teen dating violence and abuse occurs in grades 7 through 12. Section 1003.42(2)(n)2., F.S.

<sup>23</sup> Instruction in sexual abstinence and the consequences of teen pregnancy occurs in grades 6 through 12. Section 1003.42(2)(n)3., F.S.

<sup>24</sup> Section 1003.42(2)(n), F.S.

<sup>25</sup> Section 1003.46(1), F.S.

<sup>26</sup> Section 1003.42(5)

<sup>27</sup> Section 1003.46(2), F.S.

<sup>28</sup> Section 1003.42(1)(b), F.S.

<sup>29</sup> Section 1003.42(5), F.S.

<sup>30</sup> Section 1003.46(2)(d), F.S.

whether adopted and purchased from the state-adopted instructional materials list, adopted and purchased through a district instructional materials program, or otherwise purchased or made available.<sup>31</sup> School district policies regarding library media materials selection vary. Some school districts have policies that provide criteria for the selection of materials, with consideration being given to the needs of the school based on the knowledge of curriculum and existing collection, and the needs of the students attending the school.<sup>32</sup> Such procedures may include the school media specialist evaluating reputable, unbiased, and professionally prepared aids such as those published by companies and accepted by the educational media profession. The school media specialist may also consult with other staff members of a school regarding evaluation of materials. Some school districts also utilize district handbooks that provide support for library media specialists.<sup>33</sup>

In 2022, the Legislature established additional requirements related to the selection of library materials. Beginning January 1, 2023, school librarians, media specialists, and other personnel involved in the selection of school district library materials must complete a training program developed by the DOE to assist them in selecting materials that are accurate, objective, balanced, noninflammatory, current, free of pornography and prohibited material, and suited to student needs and comprehension abilities.<sup>34</sup> Each book made available to students through a school district media center or included in a recommended or assigned school or grade-level reading list must be selected by a school district employee who holds a valid education media specialist certificate, regardless of whether the book is purchased, donated, or otherwise made available to students.<sup>35</sup>

Additionally, each elementary school must publish on its website, in a searchable format prescribed by the DOE, a list of all materials maintained in the school library media center or required as part of a school or grade-level reading list.<sup>36</sup> Upon written request, school districts are required to provide access to any material or book specified in the request that is maintained in a district school library system.<sup>37</sup> Additionally, district school boards must post adopted procedures for developing library media center collections on the website of each school within the district. The procedures must:

- require that book selections are free of pornographic and other prohibited material, suited to student needs and comprehension abilities, and grade and age group appropriate;
- require consultation of reputable, professionally recognized reviewing periodicals and school community stakeholders;
- provide for library media center collections based on reader interest, support of state academic standards and aligned curriculum, and the academic needs of students and faculty; and
- provide for the regular removal or discontinuance of books based on physical conditions, rate of recent circulation, alignment to state academic standards and relevancy to curriculum, out-of-date content, and required removal for failure to subject material to public notice, review, comment, and hearing procedures.<sup>38</sup>

### *Librarians/Media Specialists*

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<sup>31</sup> Section 1006.28(2)(a)1., F.S.

<sup>32</sup> See, e.g., The School District of Osceola County, Florida, 2021-22 School Board Rules, 4.22 *Educational Media Materials Selection* (2021) at 189, available at

<https://www.osceolaschools.net/site/handlers/filedownload.ashx?moduleinstanceid=15041&dataid=75567&FileName=OCSBR%202021-22%20121421.pdf>.

<sup>33</sup> Santa Rosa County School District, *Library Media Handbook* (2016), available at <https://sites.santarosa.k12.fl.us/files/lmshdbk.pdf> (providing a mission statement, the role of the school library media specialist, and the library media center management, evaluation, and selection protocol).

<sup>34</sup> Section 1006.28(2)(d), F.S.

<sup>35</sup> Section 1006.28(2)(d)1., F.S.

<sup>36</sup> Section 1006.28(2)(d)3., F.S. The State Board of Education rule implementing this requirement included classroom libraries in the materials that must be included in the published catalog. Rule 6A-7.0713(2)(c), F.A.C.

<sup>37</sup> Section 1006.28(2)(d), F.S.

<sup>38</sup> Section 1006.28(2)(d)2., F.S.

Librarians/media specialists are defined by law as staff members responsible for evaluating, selecting, organizing, and managing media and technology resources, equipment, and related systems. They are also responsible for working with teachers to make resources available in instructional programs; assisting teachers and students in media productions; and instructing students in the location and use of information resources.<sup>39</sup> Educators in Florida may become certified educational media specialists through the DOE certification process, but Florida schools are not required to employ a certified educational media specialist.

To become a certified educational media specialist in prekindergarten through grade 12, an individual must complete one of the following pathways:<sup>40</sup>

- a bachelor's degree or higher with an undergraduate or graduate major in educational media or library science; or
- a bachelor's degree or higher with thirty semester hours in educational media or library science to include credit in management of library media programs, collection development, library media resources, reference sources and services, organization of collections, and design and production of educational media.

Each school district must provide training to school librarians and media specialists regarding the prohibition against distributing harmful materials to minors, and best practices for providing students access to age-appropriate materials and library resources.<sup>41</sup>

The Office of Library Media Services at the DOE supports district library media supervisors to help create and maintain quality library programs and foster a love of reading and effective use of ideas and information by students and faculty.<sup>42</sup>

### *Objection to Materials*

Each district school board is required to establish a process by which a parent or resident of the county may contest the district school board's adoption of a specific instructional material.<sup>43</sup> The parent or resident must file a petition, on a form provided by the school board, within 30 calendar days after the adoption of the instructional material. The school board must make the form available to the public and publish the form on the school district's website. The school board is required to conduct at least one open public hearing before an unbiased and qualified hearing officer that is not an employee or agent of the school district. Following the hearing, the school board's decision is made and not subject to further petition or review.<sup>44</sup>

In addition, each school district must have a process by which a parent or resident of the county can object to the use of a specific instructional material that was not subject to public adoption procedures or any other material used in a classroom, made available in a school library, or included on a reading list.<sup>45</sup> If, through this process, the district school board finds that an instructional material does not meet state standards for adoption or that a material contains content harmful to a minor, is not suited to student needs and ability to comprehend the material, or is inappropriate for the grade level and age group it is used for, the district must discontinue the use of the material for that grade level or age group.<sup>46</sup> There is no requirement that a current list of removed or discontinued materials be published.

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<sup>39</sup> Section 1012.01(2)(c), F.S.

<sup>40</sup> Rule 6A-4.0251, F.A.C.

<sup>41</sup> Section 1006.28(2)(d), F.S.

<sup>42</sup> Florida Department of Education, *Library Media Services*, <https://www.fldoe.org/academics/standards/subject-areas/library-media-services-instructional-t/> (last visited Apr. 30, 2023).

<sup>43</sup> Section 1006.28(2)(a)(3), F.S.

<sup>44</sup> *Id.*

<sup>45</sup> Section 1006.28(2)(a)2., F.S.

<sup>46</sup> *Id.*

Beginning June 30, 2023, the district school board must submit to the Commissioner of Education a report that identifies:

- each material for which the school district received an objection for the school year and the grounds for the objection;
- each material that was removed or discontinued as a result of an objection; and
- the grade level and course for which a removed or discontinued material was used.<sup>47</sup>

### Effect of the Bill

Currently, school boards are responsible for “instructional materials and any other materials used in a classroom, made available in a school library, or included on a reading list.”<sup>48</sup> The bill clarifies that this responsibility includes materials in classroom libraries. Because school districts are responsible for materials used in classroom libraries, the bill also clarifies that the requirement for elementary schools to publish a list of materials in the school library, includes classroom libraries in the school. As part of fulfilling this responsibility, the bill requires that district school board policies regarding objections to specific materials, used in a classroom, made available in a school or classroom library, or included on a reading list, include objection on the basis that the material depicts or describes sexual conduct, as defined in law. The bill provides for an exception to this objection for material used in instruction on HIV/AIDS, child sexual abuse prevention, abstinence and the impacts of teenage pregnancy, or any other course identified by the DOE.

The bill requires that specific materials subject to an objection on the basis that the materials are pornographic, are harmful to minors, or describe or depict sexual activity must be removed from circulation at the school where the objection was made, within 5 days of the school district’s receipt of the objection, until the completion of the objection process.

Committees convened by a school district to review and make recommendations related to the adoption of instructional materials must include parents of students that will have access to the materials being reviewed. Additionally, committees convened to review objections to library materials and other materials used in the classroom must include parents of students who will have access to the materials. All meetings of such committees must be publicly noticed and open to the public. Parents have the right to read passages from any material that is subject to an objection. If the school board denies the right to read passages due to content that is pornographic or harmful to minors, the school district shall discontinue use of the material.

The bill provides that if a school board determines that any materials contain content that is pornographic or harmful to minors, use of such materials must be discontinued throughout the school district. If the school board determines that any materials depict or describe sexual conduct, contain content not suited to student needs and their ability to comprehend the material presented, or contain content inappropriate for the grade level and age group for which the material is used, the use of such material must be discontinued for any grade level or age group for which such use is inappropriate or unsuitable.

The bill requires that the DOE adopt an objection form for use by school districts. The objection form provided by the school district must identify the school district point of contact, including his or her contact information, for the submission of the objection. Each school district’s objection process must be easy to read and understand and must be easily accessible on the homepage of its website. The bill requires that school districts must also adopt and implement a process for parents to limit their child’s access to school and classroom library materials which must be published on the school district’s website.

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<sup>47</sup> Section 1006.28(2)(e)3., F.S.

<sup>48</sup> House Bill 5101 (2023) defines “library media center” as any collection of books, ebooks, periodicals, or videos maintained and accessible on the site of a school, including in classrooms.

The bill provides that a parent that disagrees with the determination related to their objection to the use of any specific materials may request, from the Commissioner of Education, the appointment of a special magistrate to review the objection. The bill requires that the review occur within 30 days of the request and that the State Board of Education (SBE) review the special magistrate's recommendation at its next regularly scheduled meeting. The costs of the special magistrate shall be borne by the school district. The SBE shall adopt rules, including forms, necessary to implement this appeals process.

The bill revises the annual reporting requirements regarding objections to materials by requiring the inclusion of the grade level and course for which the material was used, as applicable, and a list of materials that were not removed or discontinued along with the rationale for non-removal.

The bill requires that school principals fulfill the following duties:

- communicate to parents the procedures for contesting the adoption and use of instructional materials; and
- notify parents of the process for objecting to the use of library materials.

The bill requires that instructional materials used in reproductive health and any disease, including HIV/AIDS, must be approved by the DOE. Additionally, the bill defines, for the purposes of the education code, "sex" as the classification of a person as either female or male based on the organization of the body of such person for a specific reproductive role, as indicated by the person's sex chromosomes, naturally occurring sex hormones, and internal and external genitalia present at birth. The bill requires instruction related to human sexuality classify males and females in accordance with the statutory definition of "sex"; that biological males impregnate biological females by fertilizing the female egg with male sperm; that the female then gestates the offspring; and that these reproductive roles are binary, stable, and unchangeable.

## **Protections for the Rights of Parents**

### Present Situation

#### *Constitutional Rights of Parents*

In 2021,<sup>49</sup> the legislature created the Parents' Bill of Rights (PBOR) which enumerates parental rights with respect to a minor child for education, health care, and criminal justice procedures.<sup>50</sup> The PBOR expressly prohibits the state, its political subdivisions, any other governmental entities and any other institutions from infringing upon the fundamental right of a parent to direct the upbringing, education, health care, and mental health of his or her minor child without demonstrating a compelling state interest for such actions.<sup>51</sup>

Additionally, the Legislature found that important information relating to a minor child should not be withheld, either inadvertently or purposefully, from his or her parent, including information relating to the minor child's health, well-being, and education, while the minor child is in the custody of the school district. Therefore, the PBOR provides for a consistent mechanism for parents to be notified of information relating to the health and well-being of their minor children.<sup>52</sup>

#### *Parents' Rights Related to the Education of their Child*

The PBOR enumerates several rights of a parent, such as:<sup>53</sup>

- The right to direct the education and care of his or her minor child.

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<sup>49</sup> Chapter 2021-199, L.O.F.

<sup>50</sup> Chapter 1014, F.S.

<sup>51</sup> Section 1014.03, F.S.

<sup>52</sup> See s. 1014.02(1), F.S.

<sup>53</sup> Section 1014.04(1), F.S.



- The right to direct the upbringing and the moral or religious training of the minor child.
- The right to access and review all school records relating to the minor child.
- The right to make health care decisions for his or her minor child, unless otherwise prohibited by law.
- The right to access and review all medical records of the minor child, unless prohibited by law or if the parent is the subject of an investigation of a crime committed against the minor child and a law enforcement agency or official requests that the information not be released.

The PBOR is not exhaustive but, unless required by law, the rights of a parent of a minor child in Florida may not be limited or denied.<sup>54</sup> To this end, any employee of the state, or any of its political subdivisions, or any governmental entity may be subject to disciplinary action if they encourage or coerce a minor child to withhold information from his or her parent.<sup>55</sup>

However, the PBOR specifies that it does not:<sup>56</sup>

- Authorize a parent of a minor child in this state to engage in conduct that is unlawful or to abuse or neglect his or her minor child in violation of general law.
- Condone, authorize, approve, or apply to a parental action or decision that would end life.
- Prohibit a court of competent jurisdiction, law enforcement officer, or employees of a government agency that is responsible for child welfare from acting in his or her official capacity within the reasonable and prudent scope of his or her authority.
- Prohibit a court of competent jurisdiction from issuing an order that is otherwise permitted by law.

In addition to the above enumerated rights, the PBOR requires Florida's school districts to adopt policies designed to promote parental involvement in the public school system.<sup>57</sup> Such policies must provide for:<sup>58</sup>

- A plan for parental participation in schools to improve parent and teacher cooperation in such areas as homework, school attendance, and discipline.
- A procedure for a parent to learn about his or her child's course of study, including the source of any supplemental education materials.
- Procedures for a parent to object to instructional materials. Such objections may be based on beliefs regarding morality, sex, and religion or the belief that such materials are harmful.
- Procedures for a parent to withdraw his or her student from any portion of the school district's comprehensive health education that relates to sex education or instruction in acquired immune deficiency syndrome education or any instruction regarding sexuality if the parent provides a written objection to his or her child's participation. Such procedures must provide for a parent to be notified in advance of such course content so that he or she may withdraw his or her student from those portions of the course.
- Procedures for a parent to learn about the nature and purpose of clubs and activities offered at his or her child's school, including those that are extracurricular or part of the school curriculum.

Parents must be explicitly notified about a number of parental rights and responsibilities set forth in the education code.<sup>59</sup> A school district may comply with these notice requirements by providing information to parents electronically or by publishing it to its website.<sup>60</sup>

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<sup>54</sup> Section 1014.04(4), F.S.

<sup>55</sup> Section 1014.04(3), F.S.

<sup>56</sup> Section 1014.04(2), F.S.

<sup>57</sup> Section 1014.05(1), F.S.

<sup>58</sup> *Id.*

<sup>59</sup> Section 1014.05(1)(f), F.S. For example, school districts must provide parents notice about the right to exempt their student from immunizations, the right to inspect school district instructional materials, and the right to opt out of any school district data collection not required by law. *Id.*

<sup>60</sup> Section 1014.05(2), F.S.

In 2022, the Legislature further supported the rights of parents to direct the education of their students by requiring school districts to comply with the following:

- adopt procedures for notifying parents if there is a change in the student's services or monitoring related to a student's mental, emotional, or physical health or well-being;
- prohibit classroom instruction by school personnel and third parties about sexual orientation or gender identity in kindergarten through grade 3 or in a manner that is not age-appropriate or developmentally appropriate for students in accordance with state standards;
- notify parents of each health care service available to their student through the school district and allow parents to consent to, or decline, each service individually; and
- provide any questionnaire or health screening form to a parent and obtain permission of the parent prior to administering it to a student in kindergarten through grade 3.<sup>61</sup>

School districts are required to develop a process for parents to notify the school or principal regarding compliance with these new requirements. Additionally, school districts must adopt policies to notify parents of these procedures. Parents are required to attempt to resolve any dispute over implementation of the above requirements with the school district, however, if the concern is not timely resolved by the district, a parent may seek the appointment of a special magistrate by the Department of Education or file an action for declaratory judgment and injunctive relief.<sup>62</sup>

### Effect of the Bill

The bill expands the existing prohibition on instruction relating to sexual orientation and gender identity in kindergarten through grade 3 to include prekindergarten through grade 8 and expressly states that charter schools must comply with this requirement. The bill creates an exception to this prohibition for required instruction in abstinence and HIV/AIDS. Consistent with existing law, the bill requires that instruction on sexual orientation and gender identity in grades 9 through 12 be age-appropriate or developmentally appropriate for students.

The bill requires a school district to publish on its website its policies for notifying parents of the appeals process regarding concerns with the school district's implementation of requirements regarding a parent's involvement in changes to services provided by the school district to his or her student, instruction on sexual orientation or gender identity, or school district health services.

The bill implements new requirements for Florida's public K-12 educational institutions relating to personal titles and pronouns. The bill requires that it be the policy of every public K-12 educational institution that a person's sex is an immutable biological trait and that it is false to ascribe to a person a pronoun that does not correspond to such person's sex. The bill prohibits:

- an employee, contractor, or student, as a condition of employment, enrollment, or participation, at a public K-12 educational institution, be required to refer to another individual by a personal title or pronouns that do not align with the person's sex;
- a K-12 public institution employee or contractor from providing a student with the individuals preferred personal title or pronouns if they do not correspond to the employee or contractor's sex;
- any requirements that a student provide his or her preferred personal title or pronouns; and
- any penalty or adverse action against a student for not providing his or her preferred title or pronouns.<sup>63</sup>

The bill provides an exception to these prohibitions for individuals with verified disorders of sexual development, including, but not limited to 46, XX disorder of sex development; 46, XY disorder of sex

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<sup>61</sup> Section 1001.42(8)(c)1.-6., F.S.

<sup>62</sup> Section 1001.42(8)(c)7., F.S.

<sup>63</sup> House Bill 5101 (2023) provides that these requirements only apply to the actions of an employee or contractor acting within the scope of their employment duties with the public K-12 educational institution.

development; sex chromosome disorder of sex development; XX or XY sex reversal; and ovotesticular disorder.

The SBE may adopt rules to implement requirements related to personal titles and pronouns.

The bill reenacts a number of provisions in the education code to incorporate the definition of “sex” throughout.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

#### **1. Revenues:**

None.

#### **2. Expenditures:**

None.

### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

#### **1. Revenues:**

None.

#### **2. Expenditures:**

None.

### **C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

### **D. FISCAL COMMENTS:**

None.