

**I need your parent's permission  
before I can discuss your  
problem with you:  
Counseling Under SB 12**

**Andie Tate - Northwest Independent School District**



## **Agenda: Navigating SB 12**

- ★ **Historical context**
- ★ **Break down key SB 12 components**
- ★ **TEA guidance & how district's have approached compliance**
- ★ **Hypotheticals**

# Parental Rights: Federal Law

## *Meyer v. Nebraska (1925)*

- ★ Nebraska law prohibited schools from teaching any language other than English. A teacher who taught German was convicted under the law and claimed the law violated the Fourteenth Amendment's Due Process Clause.
- ★ The Supreme Court ruled the law was unconstitutional, as it violated liberty interest, including the rights of parents to control the upbringing of their children

## *Pierce v. Society of Sisters (1925)*

- ★ The Compulsory Education Act of 1922 required parents to send their children to public schools, and the Court declared the law unconstitutional.
- ★ "The fundamental liberty upon which all governments in this Union repose excludes any general power of the State to standardize its children by forcing them to accept instruction from public teachers only."

# Parental Rights: Federal Law

## *Wisconsin v. Yoder (1972)*

- ★ Wisconsin law required children to attend school until the age of 16, which Amish families alleged interfered with their free exercise rights.
- ★ The Court agreed: "This case involves the fundamental interest of parents, as contrasted with that of the State, to guide the religious future and education of their children. The history and culture of Western civilization reflect a strong tradition of parental concern for the nurture and upbringing of their children. This primary role of the parent in the upbringing of their children is now established beyond debate as an enduring American tradition."



## Parental Rights: Federal Law



- ★ The 14th Amendment gives parents the right to direct the education and upbringing of their child.
- ★ This requires that the state's interest in public education has to be balanced with the parents' liberty interest



## Parental Rights: FERPA

- ★ **Family Educational Rights and Privacy Act (1974)**
- ★ Gives parents the rights to:
  - ★ Access & inspect their minor child's education records
  - ★ Control disclosure of their records



## Parental Rights: IDEA

- ✦ **Education for All Handicapped Children Act (1975), now the Individuals with Disabilities Education Act**
- ✦ Requires schools to include parents as part of the team developing and improving their child's education plan.
- ✦ Gives parents procedural means to enforce their child's rights to FAPE (free appropriate public education)

## Parental Rights: ESSA

- ✦ **Every Student Succeeds Act (2015)**
- ✦ Increased transparency on school performance
- ✦ Requires increased data monitoring and reporting
  - ✦ Every state must measure student performance in reading, math, and science.
  - ✦ Every school must inform parents about:
    - ✦ The standards and results
    - ✦ Graduation rates
    - ✦ Suspensions
    - ✦ Absenteeism
    - ✦ Teacher qualifications

# Parent Rights Trending Post-2020



**2020**

Remote learning during the pandemic  
Sparked movements throughout the nation: "We do not co-parent with the government" - Moms for liberty slogan



**2021**

U.S. House introduced a new Parents' Bill of Rights



**2021-2025**

Dozens of states have passed parents rights legislation.



**2025**

Florida Attorney General James Uthmeier announced the creation of the Office of Parental Rights, a "team of litigators focused on fighting the fights that parents bring to us.

# Statutory Parental Rights (1995)

## Rights from Texas Education Code Chapter 26

- ★ Access all information concerning one's child at school
- ★ Temporary exemption from a class or activity that conflicts with the parent's religious or moral beliefs
- ★ Parental consent before:
  - ★ **psychological exam, test, or treatment**
  - ★ making a video recording of a child (with some exceptions)
- ★ Right to information about school counseling
- ★ Information about academic progress
- ★ Request reassignment to another class
- ★ Placement in a higher grade level & early graduation
- ★ Access to teaching materials
- ★ Access to Board meetings
- ★ Grieve decisions about school matters

# Senate Bill 12

**"The fundamental rights granted to parents by their Creator and upheld by the United States Constitution, the Texas Constitution, and the laws of the state, including the right to direct the moral and religious training of the parent's child, make decisions concerning the child's education, and consent to medical, psychiatric, and psychological treatment of the parent's child...may not be infringed** on by any public elementary or secondary school or state government entity, including the state or a political subdivision of the state, unless the infringement is:

- necessary to further a compelling state interest, such as providing life-saving care to a child; and
- narrowly tailored using the least restrictive means to achieve that compelling state interest."

Tex. Educ. Code Section 1.009

## Senate Bill 12: Consent Required

Written consent from parents is required for:

- ★ Psychological or psychiatric examination, test or treatment.
- ★ Routine care provided by an individual who is authorized by the district to provide physical or mental health-related services

"Psychological or psychiatric examination or test" means a method designed to elicit information regarding attitude, habit, trait, opinion, belief, feeling, or mental disorder. This can include a method embedded in an academic lesson or presented as a survey, check-in, or screening.

"Psychological or psychiatric treatment" means a planned or systematic use of a method that is designed to affect the behavior, emotion, or attitude of a student or group of students.

Consent for "routine care" can be obtained at the beginning of the school year and will be effective until withdrawn.

## Senate Bill 12: Student Well-Being Questionnaire

School employees must provide a copy of a student well-being questionnaire or health screening form and obtain parental consent, before administering the questionnaire or form to a student.

This does not limit a school employee's ability to inquire about a student's daily well-being without parental consent.

A look forward: By July 2026, expect revised school counseling frameworks and standards; educator practices and professional conduct principles; and other student services personnel guidelines, standards, or frameworks.

## Senate Bill 12: Notice Required

TEA must adopt a procedure for schools to notify a parent regarding:

- A change in services provided to the student, or
- A change in monitoring a student's mental, emotional, or physical health or well-being.

Disclosure to the parent is not required if a reasonably prudent person would believe the disclosure is likely to result in abuse or neglect.

More guidance to come after TEA adopts the procedure.

## Senate Bill 12: Notice Required

### The procedure must:

- ★ encourage a student to discuss issues relating to the student's well-being with the student's parent; or
- ★ facilitate the discussion.

### The procedure cannot:

- ★ prohibit a school employee from notifying a parent of (1) information about the student's mental, emotional, or physical health, or (2) a change in services or monitoring of a student's mental, emotional, or physical health;
- ★ encourage a student to withhold information from their parent; or
- ★ prevent a parent from accessing education or health records concerning the parent's child.

## Senate Bill 12: No Withholding Information From Parent

Prohibits a trustee, administrator, or educator from withholding information about a child from his or her parent.

An educator is not "withholding" information if the educator is following the law, including FERPA.

## Senate Bill 12: Notice of Offense Against a Child

School officials must provide parents notice not later than one school business day after the date the employee first suspects that a criminal offense has been committed against the parent's child.

Any attempt to coerce a child to withhold information from their parent is grounds for discipline, including by SBEC

## Senate Bill 12: Social Transitioning

Prohibits schools & school employees from:

- ★ "assisting a student...with social transitioning"
- ★ providing any information about social transitioning

"Social transitioning" is defined to include the adoption of a different name, pronouns, or expressions of gender that "deny or encourage a denial of the person's biological sex at birth"

Enforcement

- ★ Parents may report violations to the school board.
- ★ An investigation is required
- ★ The school board must report confirmed violations "immediately" to the state commissioner of education.

# Senate Bill 12: Instruction Regarding Sexual Orientation and Gender Identity

Prohibits instruction, guidance, activities or programming on sexual orientation or gender identity. However, this does not limit:

- ★ student's ability to engage in speech or expressive conduct protected by the First Amendment;
- ★ the ability of a person who is authorized by the district to provide physical or mental health-related services to provide physical or mental health-related services with parental consent; or
- ★ ability to for an organization whose membership is restricted to one sex and whose mission does not advance a political or social agenda from meeting on school property.

## TEA Guidance:

### TAA-SB 12: Required Parental Rights Form and Right to Health-Related Services Information

TEA released guidance for parents and schools on August 28 for various aspects of SB 12.

The guidance made a couple of things clear:

- 1 Schools are required to follow the Texas Essential Knowledge and Skills (TEKS) when adopting curriculum.
- 2 School counseling services, social skills training, substance abuse prevention, and stress management may all be considered as health-related services.
- 3 School counselors must implement a comprehensive school counseling program in accordance with state law and guidelines, but parents can choose to remove their student from the program.

# TEA Guidance:

## TAA-**\*Updated\*** SB 12: Required Parental Rights Form and Right to Health-Related Services Information

TEA released **\*updated\*** guidance on SB 12 on September 11 due to several questions from parents and schools.

The guidance focused on the difference between “health-related services” and “health-care services.”

“Health-related services” consent is assumed, unless the parent has specifically withheld consent, but require notice either before or after the service is delivered.

“Health-care services” require parents to opt-in by providing active, informed consent before the service can be administered, except in emergency scenarios.

<https://tea.texas.gov/about-tea/news-and-multimedia/correspondence/taa-letters/updated-sb-12-guidance-required-parental-rights-form-and-right-to-health-related-services-information>

# TEA Guidance: September FAQ

Schools cannot establish an all-opt-out or all-opt-in approach to health-related and health-care services.

Once the District notifies parents that first-aid is a health-related service that is offered as necessary, and the parent does not opt-out, the school does not need prior consent for first aid.

General caretaking is not considered a health-related or health-care service and can be provided without parental consent. This includes:

- ★ offering a change of clothing if necessary
- ★ assisting with cleaning up spills or other accidents
- ★ feeling a child’s forehead
- ★ applying or providing band aids

Nurses and educators are encouraged to use their best professional judgement in notifying parents about visits to the nurse’s office.

[https://tea.texas.gov/about-tea/laws-and-rules/draft-rule-text-to-comply-with-sb-12-tec-260083.pdf?utm\\_medium=email&utm\\_source=govdelivery](https://tea.texas.gov/about-tea/laws-and-rules/draft-rule-text-to-comply-with-sb-12-tec-260083.pdf?utm_medium=email&utm_source=govdelivery)

# TEA Guidance: Draft Rule

## Definitions:

**Monitoring:** “means planned and recurring observations of a student. Monitoring does not include incidental or in-the-moment observations or unplanned interactions.

**Health-care services:** “services that would meet the definition of either psychological or psychiatric examination or test or psychological or psychiatric treatment, as well as services that involve medical treatment, medical procedures, or dispensing medication.”

**Health-related services:** “services that are typically short-term, noninvasive activities designed to promote a student’s mental, emotional, or physical health or well-being, but are not considered a health-care service. Health-related services are different from healthcare services in that they are typically designed to promote healthy student behaviors and not considered formal methods that rise to the level of health-care services.”

# TEA Guidance: Draft Rule

Changes in services and monitoring related to the student’s mental, emotional, or physical health or well-being should be communicated to parents prior to the change, but if not possible no less than three days after the change.

District’s must encourage and cannot prohibit an employee from informing a parent of:

- (1) information about the student’s mental, emotional, or physical health or well-being; or
- (2) a change in services provided to or monitoring of a student related to the student’s mental, emotional, physical health and well-being.

Behavioral Threat Assessments are exempt from the requirements of this rule.

[https://tea.texas.gov/about-tea/laws-and-rules/draft-rule-text-to-comply-with-sb-12-tec-260083.pdf?utm\\_medium=email&utm\\_source=govdelivery](https://tea.texas.gov/about-tea/laws-and-rules/draft-rule-text-to-comply-with-sb-12-tec-260083.pdf?utm_medium=email&utm_source=govdelivery)

# Comprehensive School Counseling Program

A guidance curriculum to help students develop their full educational potential, including the student's interests and career objectives.

A responsive services component to intervene on behalf of any student whose immediate personal concerns or problems put the student's continued educational, career, personal, or social development at risk.

An individual planning system to guide a student as the student plans, monitors, and manages the student's own educational, career, personal, and social development.

System support to support the efforts of teachers, staff, parents, and other members of the community in promoting the educational, career, personal, and social development of students.

Tex. Educ. Code Section 33.005

## Practical Issues: Confidentiality & Required Reporting

SB 12 has a significant focus on school employees not withholding information from parents related to their child's mental, emotional health, and well-being.

"Explain the limits of confidentiality in developmentally appropriate terms through multiple methods, such as student handbooks; classroom lessons; verbal notification to individual students; and school counseling department websites, brochures and social media accounts."

"Recognize their primary ethical obligation for confidentiality is to the students but balance that obligation with an understanding of parents'/guardians' legal and inherent rights to be the guiding voice in their children's lives. School counselors understand the need to balance students' ethical rights to make choices, their capacity to give consent or assent, and parental or familial legal rights and responsibilities to make decisions on their child's behalf."

"Keep information confidential unless legal requirements demand confidential information be revealed or a breach is required to prevent serious and foreseeable harm to the student or others. Serious and foreseeable harm is different for each minor in schools and is determined by a student's developmental and chronological age, the setting, parental/guardian rights and the nature of the harm. School counselors consult with appropriate professionals when in doubt as to the validity of an exception."

"Recognize, honor and respect the importance of parents/guardians when providing services to students in a school setting and collaborate with students' parents/guardians as appropriate."

American School Counselor Association Ethical Standards for School Counselors (2022)

# Practical Issues: Consent Forms

## Mental Health Services

Through our [Comprehensive School Counseling Program](#), Arlington ISD will continue to provide the same mental health and counseling services that have been available to students in previous years. This approach offers a variety of health-related and health-care services to students.

**Mental Health-Related Services** are services to promote healthy student behaviors. All students are eligible to receive these services, meaning no action is required in order for your child to be eligible. If no response is received, it will be assumed that you approve your child's participation in these services. Programming could include:

- wellness promotion and education
- emotional regulation activities (helping students manage their emotions, self-control, check-ins, and coping strategies)
- school counseling related to mental or emotional health
- substance abuse prevention
- suicide prevention

**Mental Health-Care Services** include therapeutic, ongoing mental health treatment, or psychological evaluations/testing. These services require parental consent, which means parents must give consent before mental health-care services are provided. The school counselor will connect with a parent/guardian to secure consent before any mental health-care service is provided.

[Click HERE](#) for a complete list and notification of all the comprehensive school counseling program services. Please note the list includes both health-related and health-care services.

**Parents always have the right to decline any mental health-related service. You may do so by submitting your request in writing to your student's counselor.** Additionally, you will be notified in advance of any proposed changes to the services available to our students as part of the Comprehensive School Counseling Program. This notice is intended to inform you of all available health-related and health-care services and does not necessarily mean that any of these services will be provided to your child.

Texas school districts have had success implementing consent forms for counseling and health services

Districts have reported relatively low rates of parents have opted out of counseling and health consent forms.

However, some report there is a higher rate of parents that opt-out of counseling services as compared to health services.

# Practical Tips: Counseling in the Crisis Scenarios

Threat assessments are not subject to parental consent prior to implementation.

Parent's must be notified and allowed the opportunity to provide information to the threat assessment team when a threat assessment is necessary.

If a student poses a risk of violence to self, then the school must implement the District's suicide prevention program.

After the threat assessment is completed, the threat assessment team must inform the parent of the findings.

Regardless of the findings, the team cannot provide mental health services without parental consent.

## Practical Tips: Counseling in the Wake of SB 12

Review parent consent before initiating counseling services

Maintain documentation on services provided and communications with parents

Notify parents of mental-health related services and ongoing concerns, as appropriate

Maintain open, age-appropriate, communication with student's on parent's right to information and the importance of working with parents to support students.

Continue to build relationships with students by asking about a student's daily or general well-being.

Keep student's safe and respond in crisis-scenarios.

**REMEMBER: disclosure is not required if a reasonably prudent person would believe the disclosure is likely to result in abuse or neglect.**

## Hypothetical 1: Kevin's Bacon

Kevin's family eats a strict vegetarian diet for health reasons, but Kevin has recently become bacon-curious. When he goes through the breakfast line at school, he samples bacon and French toast sticks on a whim. Before long, he's piling pepperoni pizza on his plate at lunch and sneaking ham from his friend's sandwiches.

At the end of the month, Kendra (Kevin's mom) checks his cafeteria purchases online and discovers Kevin's culinary adventure. She files a grievance against the cafeteria manager for allowing Kevin to access meat products and demands a refund of all the meals he purchased that included pork products.

The cafeteria manager gives the refund but doesn't put any flags on Kevin's lunch account or notify cafeteria staff of his family's restrictions.

Kevin continues sampling pork in his school meals. His girlfriend brings homemade sausage rolls, and his friends start selling beef jerky to him after school. Is there any risk to the school?

## Hypothetical 2: The Nightmare Before Homecoming

It is homecoming week at Oogie Boogie High School, and it is all hands on deck for the school's very first Halloween-themed homecoming game on Friday. 'Tis the season for outrageous pranks, dramatic breakups, and an overworked counselor suite. On Thursday morning, Ms. Skellington arrives ready to tackle her overflowing inbox—only to discover that the entire east side of the District has lost internet, taking her email and student systems down with it.

As she begins sifting through the mountain of handwritten notes on her desk, Sally bursts into her office, tears streaming. Ms. Skellington guides her to a chair, hands her a box of tissues, and tries to help her steady her breathing. Between sobs, Sally finally whispers, "I don't want to be here anymore."

Sally is a freshman, and Ms. Skellington has never met her before. What are her next steps?

## Hypothetical 3: Buddy's Adventure

It is the first Tuesday back to school after Thanksgiving break at Empire State Elementary, and Counselor Michael has just finished decorating his office with more paper snowflakes than a human resources memo would technically approve. Suddenly second-grader Buddy arrives for his weekly counseling visit—he's had trouble adjusting after moving from North Pole Elementary over the summer break. His parent's have consented to this service.

Buddy is normally a bundle of energy, but today he trudges in, droopy-eyed and dragging his backpack. When Mr. Michael gently asks what's up, Buddy admits, "I've been staying up super, super late playing my new video game...like past midnight. My parents think I'm asleep, but I'm actually building the world's biggest digital gingerbread factory."

He's exhausted, falling behind on classwork, and even nodded off during morning announcements. Should Mr. Michael notify Buddy's parent's of this change?



## Hypothetical 4: Buddy's Adventure Cont.



Let's imagine that instead, Buddy had reported: "My dad gets really angry and throws things. Last night he pushed me, and I am scared to go home." Would your response change?



**QUESTIONS?**

