

1                                   **PUBLIC SCHOOLS SURVEYS AMENDMENTS**

2   1999 GENERAL SESSION

3   STATE OF UTAH

4   **Sponsor: Robert F. Montgomery**

5 AN ACT RELATING TO PUBLIC EDUCATION; PROVIDING FOR THE CREATION OF A  
6 STATE STUDENT SURVEY REVIEW COMMITTEE; PROVIDING FOR COMMITTEE  
7 MEMBERSHIP; PROVIDING FOR COMMITTEE REVIEW OF SCHOOL SURVEYS THAT  
8 INVOLVE MORE THAN ONE SCHOOL DISTRICT AND INDIVIDUAL DISTRICT  
9 SURVEYS APPROVED BY THE DISTRICT SUPERINTENDENT; AND CREATING A  
10 PRESUMPTION OF PARENTAL APPROVAL AS RELATED TO APPROVED SURVEYS IF  
11 CERTAIN CONDITIONS ARE MET.

12 This act affects sections of Utah Code Annotated 1953 as follows:

13 AMENDS:

14                   **53A-13-302**, as last amended by Chapter 318, Laws of Utah 1996

15 *Be it enacted by the Legislature of the state of Utah:*

16                   Section 1. Section **53A-13-302** is amended to read:

17                   **53A-13-302. Activities prohibited without prior written consent -- Validity of consent**  
18 **-- Qualifications.**

19                   (1) Policies adopted by a school district under Section 53A-13-301 shall include  
20 prohibitions on[:(+)] the administration to a student of any psychological or psychiatric  
21 examination, test, or treatment, or any survey, analysis, or evaluation without the prior written  
22 consent of the student's parent or legal guardian, or, as respects a survey, that the consent is  
23 presumed under Subsection (5)(c), in which the purpose or evident intended effect is to cause the  
24 student to reveal information, whether the information is personally identifiable or not, concerning  
25 the student's or any family member's:

26                   (a) political affiliations or, except as provided under Section 53A-13-101.1 or rules of the  
27 State Board of Education, political philosophies;

- 28 (b) mental or psychological problems;
  - 29 (c) sexual behavior, orientation, or attitudes;
  - 30 (d) illegal, anti-social, self-incriminating, or demeaning behavior;
  - 31 (e) critical appraisals of individuals with whom the student or family member has close
  - 32 family relationships;
  - 33 (f) religious affiliations or beliefs;
  - 34 (g) legally recognized privileged and analogous relationships, such as those with lawyers,
  - 35 medical personnel, or ministers; and
  - 36 (h) income, except as required by law.
- 37 (2) The prohibitions under Subsection (1) shall also apply within the curriculum and other
- 38 school activities unless prior written consent of the student's parent or legal guardian has been
- 39 obtained.
- 40 (3) Written parental consent is valid only if a parent or legal guardian has been first given
- 41 written notice and a reasonable opportunity to obtain written information concerning:
- 42 (a) records or information, including information about relationships, that may be
  - 43 examined or requested;
  - 44 (b) the means by which the records or information shall be examined or reviewed;
  - 45 (c) the means by which the information is to be obtained;
  - 46 (d) the purposes for which the records or information are needed;
  - 47 (e) the entities or persons, regardless of affiliation, who will have access to the personally
  - 48 identifiable information; and
  - 49 (f) a method by which a parent of a student can grant permission to access or examine the
  - 50 personally identifiable information.
- 51 (4) (a) Except in response to a situation which a school employee reasonably believes to
- 52 be an emergency, or as authorized under Title 62A, Chapter 4a, Part 4, Child Abuse or Neglect
- 53 Reporting Requirements, or by order of a court, disclosure to a parent or legal guardian must be
- 54 given at least two weeks before information protected under this section is sought.
- 55 (b) Following disclosure, a parent or guardian may waive the two week minimum
  - 56 notification period.
  - 57 (c) Parental authorization shall be valid until the commencement of the subsequent school
  - 58 year or until one of the following occurs:

59 (i) the child completes or withdraws from the course, activity, or program for which it was  
60 granted; or

61 (ii) a written withdrawal of authorization is submitted to the school principal by the  
62 authorizing parent or guardian.

63 (d) A general consent used to approve admission to school or involvement in special  
64 education, remedial education, or a school activity does not constitute written consent under this  
65 section.

66 (5) (a) (i) There is created the State Student Survey Review Committee, hereafter referred  
67 to as the "committee," composed of 13 members appointed by the state superintendent of public  
68 instruction.

69 (ii) The committee shall consist of parents, teachers, and school administrators.

70 (iii) At least seven members of the committee shall be parents of children in the public  
71 education system § , WHERE NEITHER THE PARENT NOR ANY MEMBER OF THE PARENT'S  
72 HOUSEHOLD IS EMPLOYED BY THE PUBLIC EDUCATION SYSTEM § .

73 (b) (i) At the request of the superintendent, the committee shall review surveys that involve  
74 two or more school districts and individual district surveys approved by the district superintendent.

75 (ii) After review, the committee may approve, object to, or take no position with regard  
76 to any proposed survey submitted to it.

77 (c) If a proposed survey has been approved by the committee, written parental consent is  
78 presumed and determined to have occurred if:

79 (i) the parent of a student has been notified § IN PERSON, BY TELEPHONE, OR BY MAIL § of  
80a the proposed survey at least two weeks prior  
81 to its administration; and

82 (ii) the parent has not denied approval or objected to the student's participation.

80A § (d)(i) A PARENT MAY FILE WITH THE SCHOOL OF ATTENDANCE AT ANY TIME DURING THE  
80B SCHOOL YEAR A WRITTEN CONSENT OR DENIAL FOR THE STUDENT TO PARTICIPATE IN OR BE  
80C EXCLUDED FROM SURVEYS APPROVED BY THE COMMITTEE.

80D (ii) THE CONSENT OR DENIAL IS GOOD ONLY FOR THE SCHOOL YEAR IN WHICH IT IS  
80E FILED  
81 AND MAY BE WITHDRAWN BY THE PARENT AT ANY TIME.

80a (6) (a) IF A SURVEY IS CONDUCTED IN WHOLE OR IN PART UNDER THE PRESUMED PARENTAL  
80b CONSENT PROVISION IN SUBSECTION (5) (c), IT MUST BE CONDUCTED BY A COMMERCIAL  
80c POLLING BUSINESS.

80d (b) THE POLLING BUSINESS MUST CERTIFY THAT:

80e (i) ALL RESPONSES SHALL BE USED ONLY FOR STATISTICAL PURPOSES;

**(ii) NO INFORMATION IDENTIFIED OR IDENTIFIABLE WITH SPECIFIC INDIVIDUALS SHALL  
BE**

80g **DIVULGED TO ANY GOVERNMENTAL OR PRIVATE ENTITY; AND**  
80h **(iii) ALL INFORMATION IDENTIFIED OR IDENTIFIABLE WITH SPECIFIC INDIVIDUALS SHALL**  
80i **BE DESTROYED WITHIN FIVE WORKING DAYS OF ITS COLLECTION.** §  
81 [~~5~~] § [~~6~~] **(7)** § This section does not limit the ability of a student under Section 53A-13-101.3  
82 to spontaneously express sentiments or opinions otherwise protected against disclosure under this

83 section.

84           ~~[(6)]~~ § ~~[(7)]~~ **(8)** § (a) If a school employee or agent believes that a situation exists which  
84a presents

85 a serious threat to the well-being of a student, that employee or agent shall notify the student's  
86 parent or guardian without delay. If, however, the matter has been reported to the Division of  
87 Child and Family Services within the Department of Human Services, it is the responsibility of the  
88 division to notify the student's parent or guardian of any possible investigation, prior to the  
89 student's return home from school.

90 (b) The division may be exempted from the notification requirements described in [this]  
91 Subsection § ~~(7)~~ (8) § (a) only if it determines that the student would be endangered by notification  
of his  
92 parent or guardian, or if that notification is otherwise prohibited by state or federal law.

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**Legislative Review Note**  
**as of 2-1-99 6:04 PM**

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

**Office of Legislative Research and General Counsel**