



North Carolina Department of Public Safety

Prevent. Protect. Prepare.

Office of the General Counsel

2023 Parents' Bill of Rights Legislation

S.L. 2023-106 (S49)

I. Introduction

During the 2023 legislative session, the General Assembly enacted [S.L. 2023-106](#) (S49), to address the rights of parents to direct the upbringing, education, health care, and mental health of their minor children. Part I amends the General Statutes by adding a new Chapter 114A to establish a Parents' Bill of Rights and is effective August 15, 2023. Part II amends Subchapter III of Chapter 115C by adding a new Article that establishes requirements for public school units to implement a program that assists parents and families in effectively participating in their child's education. Although Part II is effective August 16, 2023, the deadlines to complete requirements, such as developing policies and guides or notifications to parents, are either January 1, 2024, or the first school day thereafter. There are other deadlines for rules and reports that must be submitted by the public-school units or the State Board of Education. Part III amends Article 1A of Chapter 90 by adding a new part to require parental authorization for the health care of minors. It is effective December 1, 2023, and will apply to violations committed on or after that date.

II. Parents' Bill of Rights

A. Parents' Rights

Part I of S49 adds a new Chapter 114A to establish the Parents' Bill of Rights. G.S. 114A-10 outlines the general rights of parents to include the right to:

1. Direct the education and care of his or her child;
2. Direct the upbringing and moral or religious training of his or her child;
3. Enroll his or her child in a public or nonpublic school;
4. Access and review all education records as authorized by FERPA, relating to his or her child;
5. Make health care decisions for his or her child, unless otherwise provided by law, including Article 1A of Chapter 90 of the General Statutes;
6. Access and review all medical records of his or her child as authorized by HIPAA, with exceptions;
7. Prohibit the creation, sharing or storage of a biometric scan of his or her child without the parent's prior written consent.

Exceptions: court order, required by law (G.S. 7B-2102 and G.S. 7B-2201), scan occurs in public place where no expectation of privacy exists, or scan is used solely for security or surveillance of buildings, grounds or school transportation;

8. Prohibit the creation, sharing, or storage of his or her child's blood or deoxyribonucleic acid (DNA) without the parent's prior written consent, except as authorized pursuant to a court order or otherwise required by law;

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9. Prohibit the creation by the State of a video or voice recording of his or her child without the parent's prior written consent, except a recording made in certain circumstances such as for the purpose of classroom instruction or the security or surveillance of buildings and grounds, *see* G.S. 114A-10(9); and
10. To be promptly notified if an employee of the State suspects that a criminal offense has been committed against his or her child, unless the incident was first reported to law enforcement or the county DSS.

Part I is not limited to Public School Units. Rather, it applies broadly to “Parent(s),” “Child(ren),” and the “State,” as those terms are defined by G.S. 114A-1.

B. Limitations on Parents’ Rights.

The requirements under Chapter 114A do not prohibit a state official or employee from acting in his or her official capacity within the reasonable and prudent scope of his or her authority. *See* G.S. 114A-15(b)(1). This provision covers teachers and clinical staff employed by DPS. However, it probably does not apply to contract staff, who are not DPS employees.

III. Parental Guides and Notifications

Part II of S49 amends Subchapter III of Chapter 115C of the General Statutes by adding a new Article to read: Article 7B: Public School Unit Requirements. Part II of S49 does not apply to DJJDP because it is not a “public school unit,” as defined by the NC General Statutes.

All public, charter, and regional schools are Local Education Agencies (LEAs). Statewide educational entities such as DJJDP, DHHS, and DAC Prison Education are also NC local education agencies. However, not all LEAs are public school units or local administrative units.

Pursuant to [G.S. 115C-5\(7a\)](#), a “public-school” unit is any of the following:

1. A local school administrative unit.
2. A charter school.
3. A regional school.
4. A school providing elementary or secondary instruction operated by one of the following:
 - a. The State Board of Education, including schools operated under Article 9C of this Chapter. (*Note Article 9C governs Schools for Students with Visual and Hearing Impairments*)
 - b. The University of North Carolina under Article 29A of Chapter 116 of the General Statutes.

Additionally, [G.S. 115C-5\(6\)](#) defines a “local administrative unit” as a subdivision of the public school system which is governed by a local board of education. It may be a city school administrative unit, a county school administrative unit, or a city-county school administrative unit. [G.S. 115C-5\(5\)](#) defines “Local board” or “board” as a city board of education, county board of education, or a city-county board of education.

DJJDP is not a public school system governed by a local city or county board. Although DJJDP has a board that addresses teacher contract reviews, it is not governed by a city or county administrative unit. Therefore, it is not a local school administrative unit. Since DJJDP is not a local administrative unit, it is not a public-school unit, and thus, it is not subject to the requirements of Part II.

IV. Parental Authorization for Health Care of Minors

A. Parental Consent for Treatment

Part III of S49 amends Article 1A of Chapter 90 by adding a new part to read: Part 3. Parental Consent for Treatment. The new legislation applies to “Health Care Facilities” and “Health Care Practitioners” who are licensed, certified, or otherwise authorized under Chapter 90, Chapter 90B, Chapter 90C, or Chapter 115C to provide healthcare services in the ordinary course of business. See G.S. 90-21.10A(4).

Under the new statute, G.S. 90-21.10B, except as otherwise provided by Article 1A, or by court order, a health care facility or health care practitioner shall not provide, solicit, or arrange treatment for a minor child without obtaining written or documented parental consent. “Treatment” includes “any medical procedure or treatment . . . [and] the administration of drugs[.]” Note that S49 does not impact NC’s Minor’s Consent Law, G.S. 90-21.5(a), which allows a minor to consent to their own treatment in certain situations (e.g., certain diseases or substance use evaluation and treatment).

Note also that G.S. 115C-375.1 authorizes public school teachers and other school employees to administer some medical care to students, including providing prescription medications with a parent’s written consent, providing emergency healthcare when a delay would seriously worsen the student’s physical condition or endanger the student’s life, and performing other first aid or lifesaving techniques in which the employee has been trained. G.S. 115C-375.1 was amended by the 2023 Appropriations Act (H259 or S.L. 2023-134, sec. 7.81(c)) to clarify that the new requirement of parental consent for treatment in G.S. 90-21.10B does not impact a teacher’s ability to provide medical care as authorized by G.S. 115C-375.1.

B. In Loco Parentis

Pursuant to G.S. 143B-816 the Division is authorized to provide necessary medical or surgical treatment to preserve the life and health of youth committed to the custody of the Division. In this case, DJJDP is standing *in loco parentis* for committed youth. Pursuant to G.S. 90-21.10A, a “parent” includes a person standing *in loco parentis* and is defined as “a person who has assumed parental responsibilities, including support and maintenance of the minor.” Although DJJDP stands *in loco parentis* for committed youth, it is less clear whether this definition also applies to DJJDP when youth are housed in a detention facility pending adjudication or trial in superior court. Therefore, it is recommended that DJJDP should obtain the parent’s consent to provide medical treatment, including the administration of prescription and over the counter drugs, for youth housed in detention facilities.

C. Penalty

A health care practitioner or other person who violates this law is subject to disciplinary action by the board that licensed, certified, or otherwise authorized the practitioner to provide treatment, including a fine of up to five thousand dollars (\$5,000).