

SCHOOL DISCLOSURE OF STUDENT'S IDENTITY INFORMATION FAQ

Oklahoma State Board of Education's Parental Rights Rule

Is This Rule Valid?

According to Oklahoma statute, all rules promulgated according to the Administrative Procedures Act "are presumed to be valid until declared otherwise by a district court of this state or the Supreme Court." Agencies are required to list the authority that gives them the power to create the rule. The Attorney General, Gentner Drummond, authored an official opinion that the State Department of Education (SDE) could not promulgate rules if the SDE lists the statute 70 O.S. § 3-104 as their sole authority.

For this rule the SDE listed 70 O.S. § 3-104 as one authority as well as 3 other sources (Oklahoma Constitution, Sex Ed Statute, Parent's Bill of Rights). It appears that the additional sources of authority have the same flaws the AG wrote about regarding 70 O.S. § 3-104, and therefore the rule would not likely survive being challenged in court. However, as discussed above, the rule is presumed valid. If the rule were to be challenged in court, the rule would still need to be followed until a court declares it invalid.

What Does the Rule Say?

Rule 210:10-2-3(b) says:

"A School district shall disclose to a child's Parent(s) or guardian(s) any information known to the School district or its employees regarding material changes reasonably expected to be important to Parent(s) regarding their child's health, social, or psychological development, including Identity information. Such disclosures shall occur within 30 days of learning the information and may include referrals to for [sic] appropriate counseling services that the Parent(s) or guardian(s) may use at their discretion."

What does "Any Information" Mean?

The rule's definition says that information means "any form of information including but not limited to, Identity information." "Identity Information" is defined as including but not limited to "(1) any names or pronouns used by a student at school (2) any social transition or other transition to a gender that differs from the student's sex."

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What does Material Change Mean?

There is no definition for “material change” in the rule, but “material” typically means important. Its exact meaning is unclear.

Transitions that have already occurred in the previous school year(s) are not required to be disclosed, because it is not a “material change” in circumstance if the transition already occurred.

What does “Reasonably Expected to be Important to Parent(s)” Mean?

There is no definition in the rule, and its meaning remains unclear

What is Identity Information? Does it Include Sexual Orientation?

The rule says that Identity Information means, “but is not limited to,” (1) any names of pronouns used by a student at school (2) any social transition or other transition to a gender that differs from the student's sex.

Identity information is tied to gender identity and not sexual orientation.

How Does a School Know if Pronouns Are Different from A Student's Birth Certificate?

A school would only know if a student's pronouns were different from their birth certificate if the school maintains copies of students' birth certificates.

Is a Birth Certificate Required to Enroll in Oklahoma Schools?

There are limited exceptions, but most school districts require a birth certificate to enroll or allow time to obtain a copy of a birth certificate within a certain time frame.

Does This Mean a Teacher Must Tell a School District Information?

Because the rule states that the School District must inform the parent of changes, it is implied that a teacher or employee must tell the School District in order for the School District to inform the parent. According to these rules, a teacher should be disciplined for encouraging or coercing a minor to withhold information from their parents but does not spell out discipline for teachers for failing to disclose material changes to parents. However, the rule does say that a district's accreditation status could be at jeopardy if the school district does not initiate appropriate disciplinary action upon learning of a violation. This implies that districts must discipline teachers for violations to ensure their accreditation status is not lowered.

SCHOOL DISCLOSURE OF STUDENT'S IDENTITY INFORMATION FAQ (CONTINUED)

How is a School District Supposed to Educate if They Are Constantly Reporting Changes?

That will depend on how the SDE enforces the rule. The rule does not stop at Identity information, but includes changes in health, social, and psychological development. These broad terms are not defined. If the rule is enforced in full, it has the potential to be a giant time sink for a school district.

Are Students Interactions with School Counselors Exempt?

This is extremely tricky. Most School Counselors are not licensed psychologists and are likely not exempt. However, some districts employ school psychologists. Information shared with a School Psychologist is confidential, but the language of the rule says, "any information" known by an "employee." This may directly conflict with confidentiality laws of psychologists, and such laws supersede administrative rules, meaning conversations with School Psychologists remain confidential.

There are additional complexities when a school district contracts counseling services of a third party. The language of the contract will dictate if the third party is an independent contractor or an employee of the school district. If the counselor is an employee and not a licensed psychologist, they have the obligation to report. If they are an independent contractor, the rule does not apply to them.

What can Teachers and Counselors Do to Protect Students?

First, a teacher or counselor should tell any student seeking help that they have an obligation to disclose information to the student's parents. If this would be a deterrent for the student, then it would be better to direct the student to other resources that can provide confidentiality or are otherwise not covered by the rule.

If a student is okay with their parents finding out, or their parents already know, then a teacher or counselor could proceed to help the student and prepare a disclosure document. The school districts' policies explaining the disclosure process are unclear at this time. Teachers and counselors should seek guidance from their school districts or review relevant policies that have been distributed.

What are the Consequences of Noncompliance?

For School Districts – A school district that does not bring appropriate disciplinary actions within 30 days of learning of a violation will be found in noncompliance. The consequences of noncompliance will depend on if the State Board of Education (SBE) finds this noncompliance willful, negligent, or reckless. If the noncompliance is willful according to the SBE, then the SBE will lower the accreditation status of the district. If the noncompliance is negligent or reckless according to the SBE, then the SBE will order compliance with certain conditions. If that order is not followed, then the noncompliance will be seen as willful and accreditation status will be lowered.

SCHOOL DISCLOSURE OF STUDENT'S IDENTITY INFORMATION FAQ (CONTINUED)

For Teachers/Employees – The rule dictates that once the school district is aware of a violation, the district must initiate appropriate disciplinary action. The rule does not specify what discipline should be given for a teacher/employee, but discipline is required to avoid an accreditation downgrade.

What Should I Do If This Rule Harms Me?

If you experience a problem or hardship as a result of this rule, please contact the ACLU of Oklahoma. We would like to hear about it. You can email our team at: intake@acluok.org.

Is The ACLU Doing Anything About This?

The ACLU of Oklahoma, in tandem with our local and national partners; is currently monitoring the situation and documenting the practical impact of this rule on all parties it affects.