

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

HOUSE BILL NO. 837

INTRODUCED BY J. HINKLE, K. BOGNER, L. DEMING, S. VINTON

A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING THE TRANSPARENCY IN EDUCATION ACT;
PROVIDING A PURPOSE; PROVIDING DEFINITIONS; REQUIRING SCHOOL DISTRICTS TO MAKE
INSTRUCTIONAL MATERIALS AVAILABLE FOR REVIEW AND TO NOTIFY PARENTS OF THEIR RIGHT TO
BE INVOLVED AND MAKE DECISIONS ABOUT THEIR CHILD'S EDUCATION; REQUIRING SCHOOL
DISTRICTS TO PROVIDE PARENTS ACCESS TO THEIR CHILD'S EDUCATIONAL RECORDS;
PROHIBITING SCHOOL EMPLOYEES FROM WITHHOLDING INFORMATION ABOUT A CHILD FROM THE
CHILD'S PARENTS; PROVIDING REMEDIES FOR VIOLATIONS; REQUIRING A PARENTAL OPT-IN FOR
INSTRUCTION ON CERTAIN TOPICS; PROVIDING AN APPROPRIATION; AMENDING SECTION 20-7-120,
MCA; AND PROVIDING EFFECTIVE DATES."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Short title. [Sections 1 through 6] may be cited as the "Transparency in
Education Act".

NEW SECTION. Section 2. Purpose. The purpose of [sections 1 through 6] is to ensure public
transparency in the instruction, training, and learning materials offered by a public school and to give parents
and students reasonable access to these materials.

NEW SECTION. Section 3. Definitions. For the purposes of this part, the following definitions apply:

(1) (a) "Activities" means assemblies, guest lectures, or other educational events facilitated by a
school's faculty or staff, including those conducted by outside individuals or organizations.

(b) The term does not include student presentations.

(2) "Critical theory instruction" means teaching or otherwise providing information on any of the
following concepts:

Amendment - 1st Reading-white - Requested by: Jedediah Hinkle - (H) Education

- 2023

68th Legislature 2023

Drafter: Pad McCracken, 406-444-3595

HB0837.001.001

1 (a) the United States or the state of Montana is fundamentally, inherently, or irredeemably racist,
2 sexist, oppressive, or discriminatory;

3 (b) an individual, by virtue of sex, race, ethnicity, religion, color, or national origin, is inherently
4 racist, sexist, oppressive, or discriminatory whether consciously or unconsciously;

5 (c) an individual, by virtue of sex, race, ethnicity, religion, color, or national origin, should be
6 blamed or held responsible for actions committed in the past by other members of the individual's sex, race,
7 ethnicity, religion, color, or national origin;

8 (d) an individual's moral character is necessarily determined, in whole or in part, by the individual's
9 sex, race, ethnicity, religion, color, or national origin;

10 (e) an individual should feel guilt, blame, discomfort, anguish, or any other form of psychological
11 distress on account of the individual's sex, race, ethnicity, religion, color, or national origin; or

12 (f) any individual, by virtue of sex, race, ethnicity, religion, color, or national origin, is marginalized
13 as perpetually victimized or unable to advance in society due to being marginalized, victimized, or oppressed by
14 others.

15 (3) "Human sexuality instruction" means teaching or otherwise providing information:

16 ~~(a)~~ in which the primary focus of the instruction is about human sexuality, including intimate
17 relationships, human sexual anatomy, sexual reproduction, sexually transmitted infections, sexual acts,
18 abstinence, contraception, or reproductive rights and responsibilities; ~~or~~

19 ~~(b)~~(4) "Identity instruction" means teaching or otherwise providing information that includes in any
20 manner the topics of sexual orientation, gender identity, gender expression, or gender roles or stereotypes.

21 ~~(4)~~(5) "Learning materials" includes all textbooks, reading materials, videos, presentations, digital
22 materials, websites, online applications, digital applications for a phone, laptop, or tablet, questionnaires,
23 surveys, or other written or electronic materials that have been or will be assigned, distributed, or otherwise
24 presented physically or virtually to students as part of a class or course.

25 ~~(5)~~(6) "Original materials" means learning materials owned or licensed by the school district, school,
26 faculty, or staff that are used for student instruction.

27 ~~(6)~~(7) "School" means an institution for the teaching of children that is established and maintained
28 under the laws of the state at public expense as described in 20-6-501.

1 ~~(7)~~(8) "Teacher training materials" means any presentations, videos, professional development
2 classes, or other educational or training activities, including any written or electronic materials used or
3 distributed in the activities, that a teacher is required to attend, view, or participate in by a school district.

4 ~~(8)~~(9) "Used for student instruction" means assigned, distributed, or otherwise presented to students
5 in any course for which students receive academic credit, in any educational capacity in which participation of
6 the student body is required by the school, or in which a majority of students in a given grade level participate.
7 This term applies to any materials from among which students are required to select one or more of the
8 materials, if the available selection is restricted to specific titles.

9

10 NEW SECTION. Section 4. Curriculum transparency. (1) The board of trustees of a school district
11 shall ensure that the following information is displayed and easily accessible on the school district website, or if
12 a district does not maintain a website, made available for public inspection pursuant to subsection (2):

- 13 (a) all teacher training materials or activities used for staff and faculty training;
- 14 (b) all learning materials or activities used for student instruction, including:
 - 15 (i) the title, author, organization, and any website associated with each material and activity;
 - 16 (ii) a link to the learning material or, if the learning material is not freely and publicly available on
17 the internet, a brief description of the learning material and information on how to request to review a copy of
18 the learning material; and
 - 19 (iii) if the learning material was created for nonpublic use, the identity of the teacher, staff member,
20 school official, or outside presenter who created it. This identification may be indicated by a personal title and
21 last initial if referring to a teacher, staff member, or school official.
- 22 (c) any procedure for the documentation, review, or approval of the learning material, teacher
23 training material, or activities used for student instruction or staff and faculty training at the school, including by
24 the principal, curriculum administrators, or other teachers.

25 (2) The board of trustees shall make all learning materials, including original materials, and teacher
26 training materials available for public inspection during regular hours of operation of the school or by special
27 appointment at the school building in which the learning materials are used for student instruction. The
28 materials must be available for inspection no later than 7 days after they are requested, and the public must be

1 permitted to copy, scan, duplicate, or photograph portions of original materials within the limits of "fair use"
2 under section 107 of the Copyright Act of 1976.

3 (3) The information required by subsection (1) must:

4 (a) be displayed online or made available prior to the start of each semester. If any learning
5 materials are added to a class or course after the start of each semester, the school district shall, within 5 days
6 after the materials are first used for student instruction:

7 (i) display the learning materials online or make them available as required by subsection (1); and

8 (ii) send a notice to the parents of all students in the class informing them of the new learning
9 materials and notifying them that the materials are available for review online or in person as provided in this
10 section;

11 (b) be organized by school, grade, teacher, and subject, and remain displayed on the school
12 website or be made available for at least 2 years;

13 (c) state the date of the latest modification or update to the information; and

14 (d) for a district that maintains a website, be created and displayed in searchable or sortable
15 electronic formats.

16 (4) Nothing in this section may be construed to require the digital reproduction or posting of copies
17 of the learning materials or teaching training materials when doing so would infringe on copyrighted material. In
18 these cases, the school district shall:

19 (a) offer a link to a publicly available website describing and offering access to the learning
20 materials, if possible; and

21 (b) provide the learning materials and teacher training materials for public inspection as provided in
22 subsection (2).

23 (5) The board of trustees of a school district shall develop a policy for parental educational
24 involvement and shall, at the beginning of each school year, send a copy of the policy to the parents of each
25 child enrolled in the school district and post the policy on a conspicuous location on the school's website. The
26 policy must include the following rights for parents:

27 (a) parents have the right to review any learning materials and teacher training materials online or
28 at the school office during regular hours of operation or after regular hours by special appointment;

1 (b) parents have the right to copy, scan, duplicate, or photograph portions of any learning
2 materials and teacher training materials within the limits of "fair use" under section 107 of the Copyright Act of
3 1976;

4 (c) parents have the right to meet with the teacher of the class or course, the principal, or another
5 representative from the school district on request and within a reasonable time to discuss the learning materials
6 and teacher training materials;

7 (d) pursuant to 20-7-120, a statement:

8 (i) informing parents:

9 (A) that they shall give written permission for their child to attend a course of instruction, a class
10 period, an assembly, an organized school function, or instruction of any type that involves ~~human sexuality~~
11 identity instruction or critical theory instruction; and

12 (B) that they have the right to withdraw the student from the district's or school's human sexuality
13 instruction; and

14 (ii) providing a link to the location on the school's website where a parent can obtain the
15 permission form along with instructions on how to submit the form to the school; and

16 (e) a statement informing parents that they may decline their child's participation in any survey to
17 which the parents, in the parents' sole discretion, object.

18 (6) An attorney acting on behalf of a school district may request a legal opinion of the county or
19 district attorney or the attorney general as to whether a particular piece of learning material or teacher training
20 material is subject to the requirements of this section.

21
22 **NEW SECTION. Section 5. Access to child's educational records.** (1) The board of trustees of a
23 school district shall ensure that a parent may inspect and review all written and electronic records concerning
24 the parents' child that are controlled by or in the possession of a school district, district employee, or any person
25 or organization hired, contracted, or authorized by the school district to provide services to students. The board
26 may fulfill this requirement through either an online application or a portal in which a parent can access the
27 child's records, or by creating a procedure for a parent to inspect, review, copy, scan, duplicate, or photograph
28 the child's records within 5 days of receiving a written request from the parent.

1 (2) For the purposes of this section, the term "records" includes:

2 (a) attendance records;

3 (b) test scores of school-administered tests and statewide assessments;

4 (c) grades;

5 (d) extracurricular activity or club participation;

6 (e) the child's e-mail accounts;

7 (f) the child's online or virtual accounts or data;

8 (g) disciplinary records;

9 (h) counseling records;

10 (i) psychological records;

11 (j) applications for admission;

12 (k) health and immunization information, including any medical records maintained by a health

13 clinic or medical facility operated or controlled by the school district or located on district property;

14 (l) teacher and counselor evaluations of the child; and

15 (m) reports of behavioral patterns.

16 (3) ~~School~~ Except when a parent is suspected of abuse or neglect and a report has been made

17 pursuant to 41-3-201, school employees may not withhold or conceal any information from, or facilitate,

18 encourage, or coerce a child to withhold or conceal any information from, the child's parents, including but not

19 limited to information regarding the child's:

20 (a) educational records;

21 (b) curricular or extracurricular projects, assignments, or activities; and

22 (c) physical, emotional, or mental health.

23

24 NEW SECTION. Section 6. Remedies for violations. (1) An individual may submit a written

25 complaint detailing any violation of this part to the superintendent of the school district. The individual is entitled

26 to a meeting with the superintendent to discuss the complaint. The superintendent shall investigate the

27 complaint and respond to the individual in writing within 14 days after receiving the complaint describing the

28 actions of the superintendent to remedy the complaint.

1 (2) An individual may appeal the actions of the superintendent to the board of trustees of the
 2 school district by submitting a written complaint detailing the violation of this part and a description of why the
 3 superintendent's response failed to remedy the complaint. The board of trustees shall appoint a committee to
 4 investigate the complaint. The committee shall meet with the individual to discuss the complaint. Within 30 days
 5 of receiving the complaint, the committee shall submit a recommended response and proposed steps to
 6 remedy the complaint to the full board for action by the board at the next meeting.

7 (3) If the board's action does not remedy a complaint, an individual may:
 8 (a) file suit and assert a violation of this part as a claim against the school district; or
 9 (b) file a complaint with the superintendent of public instruction of the violation as gross neglect of
 10 duty under 20-4-110.

11 (4) Nothing in this section precludes an individual from filing a suit asserting a violation of this part
 12 or any other claim otherwise allowed by law and nothing in this section requires exhaustion of the other
 13 remedies under this section prior to filing a suit.

14 (5) The attorney general, state superintendent of public instruction, or district or county attorney for
 15 the district or county in which an alleged violation of this part occurs may file suit and assert a violation of this
 16 part as a claim against the school district.

17 (6) An individual that successfully asserts a claim under this section may recover:
 18 (a) declaratory relief;
 19 (b) injunctive relief to prevent or remedy a violation of this part or the effects of the violation;
 20 (c) reasonable attorney fees and costs; and
 21 (d) any other appropriate relief.

22
 23 **Section 7.** Section 20-7-120, MCA, is amended to read:

24 **"20-7-120. Excused absences from curriculum requirements -- notice -- prohibited activities.**

25 (1) ~~(a) A parent, guardian, or other person who is responsible for the care of a child may refuse to allow the~~
 26 ~~child to attend or withdraw the child from a course of instruction, a class period, an assembly, an organized~~
 27 ~~school function, or instruction provided by the district through its staff or guests invited at the request of the~~
 28 ~~district regarding human sexuality instruction. The withdrawal or refusal to attend is an excused absence~~

Amendment - 1st Reading-white - Requested by: Jedediah Hinkle - (H) Education

- 2023

68th Legislature 2023

Drafter: Pad McCracken, 406-444-3595

HB0837.001.001

1 pursuant to ~~20-5-103~~. A school may not allow a child to attend a course of instruction, a class period, an
2 assembly, an organized school function, or instruction of any type that involves ~~human sexuality identity~~
3 instruction or critical theory instruction unless that child's parent or guardian agrees in writing to allow the child
4 to attend the instruction. Pursuant to 20-5-103, a child is excused from participating in the instruction unless the
5 child fails to attend after the parent or guardian has agreed in writing to allow the child's attendance.

6 (b) A parent, guardian, or other person who is responsible for the care of a child may refuse to
7 allow the child to attend or may withdraw the child from a course of instruction, a class period, an assembly, an
8 organized school function, or instruction provided by the district through its staff or guests invited at the request
9 of the district regarding human sexuality instruction. The withdrawal or refusal to attend is an excused absence
10 pursuant to 20-5-103.

11 (2) Any school implementing or maintaining a curriculum, providing materials, or holding an event
12 or assembly at which the district provides human sexuality instruction, identity instruction, or critical theory
13 instruction, whether introduced by school educators, administrators, or officials or by guests invited at the
14 request of the school, shall adopt a policy ensuring parental or guardian notification ~~no~~ not less than 48 hours
15 or more than 10 days prior to holding an event or assembly or introducing materials for instructional use.

16 (3) A school district shall annually notify the parent or guardian of each student ~~scheduled to be~~
17 enrolled in human sexuality instruction or a course that includes critical theory instruction or identity instruction
18 in the district or school in advance of the instruction of:

19 (a) the basic content of the district's or school's human sexuality instruction, identity instruction, or
20 critical theory instruction intended to be taught to the student;

21 (b) the requirement that a parent or guardian provide written authorization for the student to attend
22 instruction that involves identity or critical theory pursuant to subsection (1)(a); and

23 (b)(c) the parent's or guardian's right to withdraw the student from the district's or school's human
24 sexuality instruction pursuant to subsection (1)(b).

25 (4) A school district shall make all curriculum materials used in the district's or school's human
26 sexuality instruction, identity instruction, or critical theory instruction available for public inspection and copying
27 for noncommercial use prior to the use of the materials in actual instruction.

28 (5) A school district or its personnel or agents may not permit a person, entity, or any affiliate or

Amendment - 1st Reading-white - Requested by: Jedediah Hinkle - (H) Education

- 2023

68th Legislature 2023

Drafter: Pad McCracken, 406-444-3595

HB0837.001.001

1 agent of the person or entity to offer, sponsor, or furnish in any manner any course materials or instruction
2 relating to human sexuality or sexually transmitted diseases to its students or personnel if the person, entity, or
3 any affiliate or agent of the person or entity is a provider of abortion services.

4 ~~(6) — For purposes of this section, "human sexuality instruction" means teaching or otherwise~~
5 ~~providing information about human sexuality, including intimate relationships, human sexual anatomy, sexual~~
6 ~~reproduction, sexually transmitted infections, sexual acts, sexual orientation, gender identity, abstinence,~~
7 ~~contraception, or reproductive rights and responsibilities."~~

8
9 **NEW SECTION. Section 8. Appropriation.** (1) There is appropriated \$190,000 from the state
10 general fund to the office of public instruction for the biennium beginning July 1, 2023, for distribution to school
11 districts as described in subsection (2) for the purpose of supporting the implementation of [sections 1 through
12 6].

13 (2) The superintendent of public instruction shall distribute to school districts that apply for funds
14 an amount equal to \$400 for each district plus \$2 for each full-time equivalent quality educator included in the
15 district's fiscal year 2024 budget. A district receiving funds shall deposit the money in the district's
16 miscellaneous programs fund to be used for the implementation of [sections 1 through 6].

17
18 **NEW SECTION. Section 9. Transition.** The legislature intends that school districts implement the
19 requirements of [sections 1 through 6] as quickly as feasible, with full implementation no later than the school
20 year beginning July 1, 2024.

21
22 **NEW SECTION. Section 10. Codification instruction -- directions to code commissioner.** (1)
23 [Sections 1 through 6] are intended to be codified as a new part of Title 20, chapter 7, and the provisions of
24 Title 20, chapter 7, apply to [sections 1 through 6].

25 (2) Section 20-7-120 is intended to be renumbered and codified in the same new part as [sections
26 1 through 6].

27
28 **NEW SECTION. Section 11. Severability.** If a part of [this act] is invalid, all valid parts that are

Amendment - 1st Reading-white - Requested by: Jedediah Hinkle - (H) Education

- 2023

68th Legislature 2023

Drafter: Pad McCracken, 406-444-3595

HB0837.001.001

1 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications,
2 the part remains in effect in all valid applications that are severable from the invalid applications.

3
4 NEW SECTION. Section 12. Effective dates. (1) Except as provided in subsection (2), [this act] is
5 effective July 1, 2023.

6 (2) [Section 6] is effective July 1, 2024.

7 - END -

AMENDED