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11/08

Floor Amendment to SB 72-FN

1 Amend RSA 169-I:2, IV as inserted by section 2 of the bill by replacing it with the following:

2

3 IV. "Compelling state interest" means a circumstance wherein the physical safety of the
4 child has been harmed or is threatened with harm of such a grave nature by the actions or inactions
5 of the child's parent or parents that the state or its agencies or instrumentalities are justified in
6 acting to protect the child without the knowledge or consent of a parent or in withholding
7 information about the child from the parent or parents. Potential or actual psychological or
8 emotional injury to a child from a parent's actual, threatened, or anticipated reaction to learning
9 information about his or her child, including emotions such as anger, disappointment, sadness,
10 disapproval or other behaviors does not constitute a compelling state interest for withholding
11 information about the child from a parent, but such injury, if sufficiently serious, may constitute
12 grounds for taking action against the parent for abuse or neglect under RSA chapter 169-C.
13 Although there are many circumstances in which a state actor, such as a teacher or a school, may act
14 in loco parentis, the mere fact that such a state actor is acting in this capacity is not sufficient to
15 establish a compelling state interest. To establish a compelling state interest a state actor must be
16 able to demonstrate the existence of actual or threatened physical harm to the child by clear and
17 convincing evidence based on specific, detailed, and reliable information. Even when a compelling
18 state interest exists, a state actor must use the means for satisfying the interest that is the least
19 infringing to the parental rights described in this chapter and must do so only for the minimum time
20 necessary to accomplish its objective.

21

22 Amend RSA 169-I:4, I as inserted by section 2 of the bill by inserting after subparagraph (y) the
23 following new subparagraphs:

24

25 (z) The right to inquire of the school or school personnel and to be truthfully and
26 completely informed if their child is being identified by any name other than the name under which

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1 the child was enrolled in the school or any nickname that a reasonable person would understand to
2 be commonly derived from such name, including under circumstances which a reasonable person
3 would understand to be for the purpose of facilitating a change of gender or gender transition.

4 (aa) The right to inquire of the school or school personnel and to be truthfully and
5 completely informed if the child is being identified or referred to by school district staff as being of a
6 gender other than that of which the child was identified or referred when enrolled.

7 (bb) The right to inquire of the school or school personnel and to be truthfully and
8 completely informed if any school personnel are proceeding with any intervention to affirm or to
9 provide an accommodation of a child's asserted gender identity when the student's gender identity is
10 other than that of which the child was identified or referred when enrolled.

11
12 Amend RSA 169-I:8 as inserted by section 2 of the bill by replacing it with the following:

13
14 169-I:8 Violations.

15 I. No school or school personnel shall infringe upon any of the parental rights set forth in
16 RSA 169-I:5, unless the infringement is supported by clear and convincing evidence and is narrowly
17 tailored to address the compelling state interest.

18 II. Any parent claiming violation of any provisions of this chapter may bring an action for
19 injunctive and declaratory relief and damages in the superior court against the state or any of its
20 political subdivisions, including, without limitation, any school board, school district, or school
21 administrative unit; any other governmental entity; or any physician, clinician, therapist, or
22 counselor or other person alleged to be responsible for or to have caused the violation. Should the
23 parent prevail in such action, in addition to ordering other remedies, the court shall award to the
24 parent his or her reasonable attorney's fees and court costs, including such attorney's fees and court
25 costs incurred in connection with an appeal to the supreme court.

26 III. Any teacher or administrator with certification to teach found through investigation by
27 the department of education to have violated any section of this law shall be deemed to have violated
28 the educator code of conduct and shall be subject to disciplinary action by the department. Any
29 certified educator found by the department to have willfully violated any section of this law shall
30 have his or her teaching credentials suspended for a minimum of one year for a first offense or
31 certification terminated for multiple offenses. Department investigation and enforcement for any
32 educator code of conduct violation under this section shall be subject to statute of limitations of 5
33 years from when the alleged offense occurred. A school employee that is not a teacher and who
34 willfully violates any provision of this section shall be placed on unpaid leave for the remainder of
35 the school year for a first offense and shall have employment terminated for multiple offenses.
36 Department investigation and enforcement of this section under the educator code shall not require
37 a prior adjudication by any other investigative or law enforcement body.

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1 IV. Any third party contracted by the district who willfully violates any provision of this
2 section shall be guilty of a violation under 651:2, III-a and, notwithstanding 651:2, IV(a), shall be
3 fined not less than \$2,500, shall be restricted from any access to all schools in the district for one
4 year for a first offense, and shall be fined \$5,000 with permanent restriction from employment or
5 contracted business with any schools in the district for any subsequent offenses.

6 V. Any medical or mental health professional found to have violated any portion of this law
7 by the agency by which such person is licensed following such agency's usual disciplinary procedures
8 shall be subject to disciplinary action. Any medical or mental health professional found willfully
9 violating any portion of this law shall have their license suspended for a minimum of one year for a
10 first offense and permanently revoked for multiple offenses. Agency investigation and enforcement
11 pursuant to any violation under this section shall be subject to a statute of limitations of 5 years
12 from when the alleged offense occurred. Investigation and enforcement of this section by the agency
13 shall not require a prior adjudication by any other investigative or law enforcement body.