



# Parental Rights in Florida



A GUIDE FOR PARENTS

Citizens Commission on Human Rights of Florida

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# Introduction

It is a fundamental right of parents to direct the upbringing, education, and care of their minor children. The U.S. Congress has decreed that based upon the Constitutional rights and human rights of all citizens, important information relating to a minor child should not be withheld, either inadvertently or purposefully, from his or her parent, including information relating to the minor child's health, mental health, well-being, and education.

This booklet is meant to provide summaries of these legal concepts and rights, and facts relating to certain important student and parental rights. This booklet is not meant to provide legal advice.

It is recommended that if needed a person seek the help of a qualified attorney on matters pertaining to their rights as a student, parent, guardian or caregiver.



# Parental Rights

## The Basics

The interest of parents in the care, custody, and control of their children is recognized as a fundamental liberty protected by the Due Process Clause of the Fourteenth Amendment to the United States Constitution.<sup>1</sup> This is based in part upon the fundamental right of privacy from interference in making important decisions relating to things such as marriage, family relationships, and child rearing and education.<sup>2</sup> As stated by the United States Supreme Court:

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*“The history and culture of Western civilization reflect a strong tradition of parental concern for the nurture and upbringing of their children. This primary role of the parents in the upbringing of their children is now established beyond debate as an enduring American tradition.”<sup>3</sup>*

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The Florida Supreme Court has also recognized the fundamental rights of parents’ in determining the care and upbringing of their children<sup>4</sup> and that these rights may not be intruded upon absent a compelling state interest.<sup>5</sup> According to the Florida Supreme Court, when analyzing a statute that infringes on the fundamental right of privacy, the applicable

standard of review requires that the statute survive the highest level of scrutiny:

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*“The right of privacy is a fundamental right which we believe demands the compelling state interest standard. This test shifts the burden of proof to the state to justify an intrusion on privacy. The burden can be met by demonstrating that the challenged regulation serves a compelling state interest and accomplishes its goal through the use of the least intrusive means.”<sup>6</sup>*

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# What are Your Rights

A list of “Parental Rights” has been compiled using existing rights understood to be guaranteed to a parent so that all parents can easily know and understand their rights. Most of these rights are codified in state and federal law and acknowledged by the courts.<sup>7</sup>

The term “parent” as used in this list of rights, means a person who has legal custody of a minor child as a natural or adoptive parent or a legal guardian.<sup>8</sup>

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*Your right as a parent to direct the upbringing, education, health care and mental health care of your child is fundamental.*

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A parent of a minor child in Florida has inalienable rights that are more comprehensive than those listed here, unless such rights have been legally waived or terminated. This summary list of rights does not cover all rights accorded to a parent of a minor child in Florida. Note that laws of every state may be complicated and typically subject to qualifications. But these are the basic rights.



# Infringement of Rights

Your right as a parent to direct the upbringing, education, health care, and mental health of your minor child is fundamental.

According to a publication from the Cornell Law School, “fundamental rights are a group of rights that have been recognized by the Supreme Court as requiring a high degree of protection from government encroachment. These rights are specifically identified in the Constitution (especially in the Bill of Rights), or have been found under Due Process. Laws encroaching on a fundamental right generally must pass strict scrutiny to be upheld as constitutional.”<sup>9</sup>

Due Process simply means that “all levels of American government must operate within the law (“legality”) and provide fair procedures.”<sup>10</sup>

As a parent, the state may not infringe on your fundamental rights as a parent to direct the upbringing, education, health care, and mental health of your minor child without demonstrating that such action is reasonable and necessary to achieve a compelling state interest and that such action is narrowly tailored and is not otherwise served by a less restrictive means.

# Health Care & Mental Health

**As a parent in Florida you have:**

**A.**



The right to make health care and mental health care decisions for your minor child, unless otherwise prohibited by law.

**B.**



The right to make medical decisions to address any needs of your minor child. This is a matter between you, your minor child, and a competent health care professional chosen by you.

**C.**



The right to exempt your minor child from immunizations for religious reasons.



D.



The right to help your minor child in a time of crisis before the initiation of an involuntary psychiatric examination unless there is substantial likelihood that without care or treatment your minor child will cause serious bodily harm to himself or herself or others in the near future, as evidenced by recent behavior.

E.



The right to be notified immediately if your minor child is removed from school, school transportation, or a school-sponsored activity and taken to a receiving facility for an involuntary examination.

F.



The right to refuse to give your minor child psychotropic/psychiatric drugs as a requirement for attendance or participation in public school services.

G.



The right to refuse psychological screening of your minor child.

H.



The right to opt your minor child out of any services offered under the school health services program by submitting a request in writing.

I.



The right to access and review all medical records of your minor child, unless prohibited by law or if you are the subject of an investigation of a crime committed against your minor child and a law enforcement agency or official requests that the information not be released.



# Education

**As a parent in Florida you have:**

**A.**



The right to direct the education and care of your minor child.

**B.**



The right to direct the upbringing and the moral or religious training of your minor child.

**C.**



The right to apply to enroll your minor child in a public school or, as an alternative to public education, a private school, including a religious school, a home education program, or other available options, as authorized by law.

**D.**



The right to access and review all school records relating to your child.

**E.**



The right to consent in writing before a biometric scan of your minor child is made, shared, or stored. This includes the right to opt out of any district-level data collection relating to your minor child not required by law.

**F.**



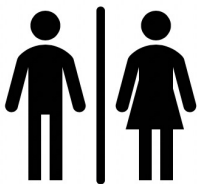
The right to learn about your child's course of study, including the source of any supplemental education materials. This includes the right to inspect school district instructional materials.

**G.**



The right to object to instructional materials and other materials used in the classroom. Such objections may be based on beliefs regarding morality, sex, and religion or the belief that such materials are harmful.

H.



The right to withdraw your minor child from any portion of the school district's required comprehensive health education that relates to sex education or instruction in acquired immune deficiency syndrome education or any instruction regarding sexuality if the parent provides a written objection to his or her minor child's participation.

I.



The right to be notified in advance of such course content, contained in (i) above, so that you may withdraw your minor child from those portions of the course.

J.



The right to learn about the nature and purpose of clubs and activities offered at your minor child's school, including those that are extracurricular or part of the school curriculum.

# How Can You Protect Your Rights?

Knowing your rights as a parent can be very confusing but protecting them shouldn't be. One of the first steps a parent can take to protect their rights is to file a statement known as a "Hatch Letter" with their child's school.

A Hatch Letter is based on the Protection of Pupil Rights Amendment (PPRA) which was sponsored by Senator Orrin Hatch and passed by Congress in 1978. The purpose of the PPRA was to protect the rights of students and the parents of students in programs funded by the United States Department of Education.

By filing a Hatch Letter, you are putting your child's school on notice that you do not want your child questioned, screened, or exposed to certain material; and expect full access to your child's records and teaching materials.

Sample Hatch Letters can be found online by searching "sample hatch amendment letter". It's your letter so feel free to amend it as you see fit. You may wish to consult your attorney on the language in your letter.

To further protect your rights as a parent, you may also wish to file a CCHR Non-Consent Form. This form was created by CCHR with the help of attorneys in order to help protect children from inappropriate Baker Acting. To obtain a copy of this form visit [www.cchrflorida.org](http://www.cchrflorida.org).

**If you feel your child's school is pressuring you to subject your child to unwanted psychiatric screening, treatment or if your child has been inappropriately Baker Acted please contact us for help.**



## Contact Us

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# References

- 1 Santosky v. Kramer, 455 U.S. 745, 748 and 753 (1982)(holding the fundamental liberty interest of natural parents in the care custody, and management of their child is protected by the Fourteenth Amendment, and termination of any parental rights requires due process proceedings); Troxel v. Granville, 530 U.S. 57, 66 (2000) (holding there is a fundamental right under the Fourteenth Amendment for parents to oversee the care, custody, and control of their children).
- 2 Carey v. Population Svcs. Int'l, 431 US 678, 684-685 (1977) (recognizing the right of privacy in personal decisions relating to marriage, family relationships, child rearing, and education); See Wisconsin v. Yoder, 406, U.S. 205, 232-33 (1972)(holding a state law requiring that children attend school past eight grade violates the parents' constitutional right to direct the religious upbringing of their children); See Parham v. J.R., 442 U.S. 584, 602 (1979)(recognizing the presumption that parents act in their children's best interest); Meyer v. Nebraska, 262 U.S. 390, 400-01 (1923)(affirming that the Constitution protects the preferences of the parent in education over those of the state); Pierce v. Society of Sisters, 268 U.S. 510, 534-35 (1925)(recognizing the right of parents to direct the upbringing of and education of their children).
- 3 Wisconsin v. Yoder, 406, U.S. 205, 232 (1972).
- 4 Beagle v. Beagle, 678 So.2d 1271, 1272 (Fla. 1996) (holding a state law violated a parent's constitutional right to privacy by imposing grandparent visitation rights over objection of the parent without evidence of harm to the child or other compelling state interest).
- 5 Id. See, e.g., Shevin v. Byron, Harless, Schaffer, Reid & Assocs., Inc., 379 So.2d 633, 637 (Fla. 1980) and Belair v. Drew, 776 So.2d 1105, 1107 (Fla. 5th DCA 2001).
- 6 Winfield v. Division of Pari-Mutuel Wagering, Dept. of Bus. Regulation, 477 So.2d 544, 547 (Fla. 1985).
- 7 Section 1002.20, F.S.; Section 1002.20(2)(b) and (6), F.S.; Section 1002.20(13), F.S.; Section 1002.20(6), F.S.; Section 1003.4285(1)b, F.S.; Subpart B., ch. 1009, F.S.; Section 1003.4282(2), F.S.; Section 1002.20, F.S.; Section 1002.20(14)-(16), F.S.; See, e.g., s. 1002.20(3), F.S.; Section 1008.25(2), (4), (5), and (7), F.S.; Section 1002.22(2)(e), F.S.; Section



1002.3105 (4)(a), F.S.; Section 1006.283(2)(b)11., F.S.; Sections 1003.3101 and 1012.42(2), F.S.; Sections 1002.38(2) and (3)(a)1, F.S.; Section 1002.39(5)(a)1., F.S.; Section 1002.395, F.S.; Section 1006.07(2), F.S.; Section 1002.23(5), F.S.; Section 1002.23(6), F.S.; Sections 1002.20(3)(a)-(b) and 1003.22(5)(a), F.S.; Sections 1002.20(3)(c) and 1003.47, F.S.; Sections 1002.20(3)(d) and 1003.42(3), F.S.; Sections 1002.20(12) and 1003.44(1) F.S.; Section 1003.421(4), F.S.; Section 1006.28(2)(a)2., F.S.; Section 1006.29(2), F.S.; Section 1002.222(1)(a), F.S. The law defines biometric information as information collected from the electronic measurement or evaluation of any physical or behavioral characteristics that may be personally identifiable, including characteristics of fingerprints, hands, eyes, and the voice. Thus, agencies or institutions may not use fingerprint scans, palm scans, retina or iris scans, face geometry scans, or voice prints. Id.; Section 1008.22, F.S.; Section 1008.25(8), F.S.; Section 1006.0625, F.S.; Section 381.0056, F.S.

8 Section 39.01(56), F.S.; Chapters 1000-1013, F.S., are referred to as the K-20 Education Code; Section 1000.21(5), F.S.

9 [https://www.law.cornell.edu/wex/fundamental\\_right](https://www.law.cornell.edu/wex/fundamental_right)

10 [https://www.law.cornell.edu/wex/Due\\_Process](https://www.law.cornell.edu/wex/Due_Process)

# Who we are

The Citizens Commission on Human Rights (CCHR) is a nonprofit mental health watchdog, responsible for helping to enact more than 180 laws protecting individuals from abusive or coercive practices.

CCHR was co-founded in 1969 by the Church of Scientology and Professor of Psychiatry Emeritus Dr. Thomas Szasz and the Florida chapter was established in 1989.

As a watchdog organization, CCHR is dedicated to the protection of children and the restoration of parental rights.

If you feel your child's school is pressuring you to subject your child to unwanted psychiatric screening, treatment or if your child has been inappropriately Baker Acted please contact us for help.



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