

Second Regular Session
Sixty-eighth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 12-0496.01 Brita Darling x2241

HOUSE BILL 12-1049

HOUSE SPONSORSHIP

Solano,

SENATE SPONSORSHIP

Aguilar, Bacon

House Committees
State, Veterans, & Military Affairs

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING PROHIBITING THE IMPOSITION OF PENALTIES RELATING**
102 **TO STUDENTS WHO DO NOT PARTICIPATE IN STATEWIDE STUDENT**
103 **ASSESSMENTS.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)

The bill prohibits a public school from penalizing a student whose parent does not allow the student to take all or part of a statewide student assessment.

Further, the department of education shall not lower a public

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

school's attainment level on the accreditation performance indicators or otherwise penalize a public school due to a parent's refusal to allow his or her child to participate in statewide student assessments.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1. Legislative declaration.** (1) The general assembly
3 hereby finds that:

4 (a) Parental authority in educational decisions has been a guiding
5 tenet in education policy in this state for several years and is a core value
6 of the statewide system of public education in Colorado;

7 (b) Parental rights, especially in the area of education, are broadly
8 protected by United States Supreme Court decisions. The U.S. Supreme
9 Court has repeatedly held that parents have the fundamental right to direct
10 the upbringing and education of their children.

11 (c) In *Pierce v. Society of Sisters*, 268 U.S. 510, 535 (1925), the
12 U.S. Supreme Court declared that, "The child is not the mere creature of
13 the State: those who nurture him and direct his destiny have the right,
14 coupled with the high duty, to recognize and prepare him for additional
15 obligations.";

16 (d) In recognition of both the right and responsibility of parents
17 to control their children's education, the U.S. Supreme Court has further
18 stated, "It is cardinal with us that the custody, care, and nurture of the
19 child reside first in the parents, whose primary function and freedom
20 include preparation for obligations the State can neither supply nor
21 hinder." *Prince v. Massachusetts*, 321 U.S. 158, 166 (1944);

22 (e) The U.S. Supreme Court has also recognized that the right of
23 parents to raise their children free from unreasonable state interferences
24 is one of the unwritten liberties protected by the due process clause of the

1 Fourteenth Amendment to the U.S. Constitution and criticized a state
2 legislature for trying to interfere "with the power of parents to control the
3 education of their own." *Meyer v. Nebraska*, 262 U.S. 390, 401 (1923);

4 (f) Policies that place school personnel at odds with appropriate
5 parental authority are counter to the goals held by Colorado's statewide
6 system of public education;

7 (g) Further, schools should not be judged based on parental
8 compliance but on factors that are within a school's control; and

9 (h) The performance of each school relating to statewide
10 assessments should be based solely on the performance of students
11 participating in the statewide assessments.

12 (2) Therefore, the general assembly declares that schools and
13 students should not be punished for the choices made and actions taken
14 by parents in the best interests of their children with regard to
15 participation by their children in annual statewide assessments.

16 **SECTION 2.** In Colorado Revised Statutes, **add 22-7-409.5** as
17 follows:

18 **22-7-409.5. State assessments - student non-participation - no**
19 **penalty.** (1) NOTWITHSTANDING ANY OTHER PROVISION OF THIS ARTICLE
20 TO THE CONTRARY, A SCHOOL DISTRICT, A CHARTER SCHOOL, OR AN
21 INSTITUTE CHARTER SCHOOL SHALL NOT PENALIZE A STUDENT IF THE
22 STUDENT'S PARENT DOES NOT ALLOW THE STUDENT TO PARTICIPATE IN ALL
23 OR PART OF AN ASSESSMENT ADMINISTERED PURSUANT TO SECTION
24 22-7-409 OR 22-7-1006. FOR PURPOSES OF THIS SECTION, A PENALTY
25 INCLUDES, BUT NEED NOT BE LIMITED TO:

26 (a) WITHHOLDING OF CREDITS TOWARD GRADUATION OR DENYING
27 A STUDENT THE ABILITY TO GRADUATE OR RECEIVE A DIPLOMA;

1 (b) DENYING A STUDENT THE OPPORTUNITY TO PARTICIPATE IN AN
2 EDUCATIONAL PROGRAM OR AN EXTRACURRICULAR ACTIVITY; OR

3 (c) DENYING A STUDENT THE ABILITY TO ADVANCE TO A
4 SUBSEQUENT GRADE LEVEL.

5 (2) BEFORE ADMINISTERING AN ASSESSMENT PURSUANT TO
6 SECTION 22-7-409 OR 22-7-1006, THE SCHOOL DISTRICT, CHARTER
7 SCHOOL, OR INSTITUTE CHARTER SCHOOL SHALL INFORM PARENTS THAT A
8 PARENT HAS THE RIGHT TO REFUSE TO ALLOW HIS OR HER CHILD TO
9 PARTICIPATE IN THE ASSESSMENT.

10 (3) THE PROVISIONS OF THIS SECTION DO NOT PROHIBIT A SCHOOL
11 DISTRICT, CHARTER SCHOOL, OR INSTITUTE CHARTER SCHOOL FROM
12 ENFORCING COMPULSORY ATTENDANCE REQUIREMENTS PURSUANT TO
13 ARTICLE 33 OF THIS TITLE.

14 **SECTION 3.** In Colorado Revised Statutes, 22-11-204, **amend**
15 (6) (c) as follows:

16 **22-11-204. Performance indicators - measures.**

17 (6) Notwithstanding any provision of this section to the contrary:

18 (c) DUE TO A PARENT'S REFUSAL TO ALLOW HIS OR HER CHILD TO
19 PARTICIPATE IN ALL OR PART OF THE ADMINISTRATION OF AN ASSESSMENT,
20 the department ~~may adjust the calculations specified in this section as~~
21 ~~necessary to take into account students for whom no score is recorded on~~
22 SHALL NOT LOWER THE LEVEL OF ATTAINMENT OF OR OTHERWISE
23 PENALIZE A PUBLIC SCHOOL IN RESPONSE TO THE LACK OF PARTICIPATION
24 OR PARTIAL PARTICIPATION OF ONE OR MORE STUDENTS IN THE
25 ADMINISTRATION OF the statewide assessments; the standardized,
26 curriculum-based, achievement, college entrance examination; or the
27 postsecondary and workforce readiness assessments.

1 **SECTION 4. Act subject to petition - effective date.** This act
2 takes effect at 12:01 a.m. on the day following the expiration of the
3 ninety-day period after final adjournment of the general assembly (August
4 7, 2012, if adjournment sine die is on May 9, 2012); except that, if a
5 referendum petition is filed pursuant to section 1 (3) of article V of the
6 state constitution against this act or an item, section, or part of this act
7 within such period, then the act, item, section, or part will not take effect
8 unless approved by the people at the general election to be held in
9 November 2012 and, in such case, will take effect on the date of the
10 official declaration of the vote thereon by the governor.