

(H. B. 1357)

(No. 35-2015)

(Approved March 23, 2015)

AN ACT

To amend Subsection 9 of Section 3 and Section 5 of Act No. 195-2012, known as the “Puerto Rico Student Bill of Rights,” in order to clarify the scope of the confidentiality policy regarding education records and the conduct and appearance of the student in the school facilities; and to establish penalties for persons who violate the confidentiality principle; and for other pertinent purposes.

STATEMENT OF MOTIVES

The children of Puerto Rico are of a compelling interest for the Commonwealth. For such reason, our Constitution provides a special and different treatment for them, distinct from that granted to others, and consigns their protection within the frame of the Bill of Rights. Moreover, public education also holds a prominent place within our Constitution. See, Article II, Sections 5 and 15, Constitution of the Commonwealth of Puerto Rico. In this manner, the due protection of our students by the Commonwealth should be vigorous and unswerving so as to ensure the full and adequate development of those citizens. The ultimate purpose is to form individuals who are socially and academically educated to contribute to the common welfare of the Island. For the aforesaid, the government and its agencies have managed the personal and academic information of students under a confidentiality policy.

The confidentiality of the academic, judicial, or medical information of a minor is indisputable, and an integral part of our judicial system with no reservation whatsoever. See, Puerto Rico Minor’s Act of 1986; Section 26 of Act No. 246-2011; the Puerto Rico Student Bill of Rights, Act No. 195-2012; Rule 10.2 of the Rules of

Procedures for Minor's Affairs; and *Pueblo en Interés del Menor A.L.G.V.*, 170 D.P.R. 987 (2007). With respect to education records, both Section 3 of the Student Bill of Rights, and the General Students Regulations 8115, establish that education records are confidential and may only be accessed through a court order. See, Article III, Regulation 8115. Furthermore, federal laws also prohibit the disclosure of a student's education record without the consent of the father and mother, or of the student, if he is eligible to make said decision. See, The Family Educational Rights and Privacy Act, 20 U.S.C. §1232g.

However, although the public school administration observes a confidentiality policy, intentional or accidental disclosure of the contents of the records is uncertain. Although for some the prohibition to disclose confidential information is obvious, the truth is that we have come across some situations in which an official of the Department of Education disclosed certain information without the consent of the father, mother, or guardian of said student. Medical, academic, and judicial information, such as any offenses and participation in diversion programs, is shared with no major consequence whatsoever, obliterating the confidentiality that protects said student. Likewise, information on the student's behavior in the classroom, personal appearance, and social relationship with other classmates has also been disclosed. We deem that the academic development of children is an integral and interdependent process, including what they learn in the classroom as well as other academic and social experiences acquired during their years in school. Therefore, any behavior, performance, or circumstance regarding the student in the school grounds should also be covered by the confidentiality established by law, rather than be limited to the record information.

As a matter of fact, there is no legal deterrent at present that compels respect towards the prohibition to disclose confidential information. Under the "Child Safety, Well-being, and Protection Act," Act No. 246, *supra*, any person who allows,

aids, or abets the unauthorized disclosure of confidential information contained in reports and files prepared in accordance with this Act shall be guilty of a misdemeanor. We are convinced that the foregoing measure should be adopted in the case of student education records to prevent the disclosure of confidential information and to grant our students the protection they are entitled to.

In summary, this measure seeks to end the injurious practice of publicly disclosing aspects of the lives, academic history, conduct, appearance, attendance, health, social interaction, and other elements of students in Puerto Rico. Furthermore, exceptions to this rule are established for purposes of security, social or judicial investigations, awards conferred, and others, provided the same are in the best interest of the minor.

This Legislative Assembly recognizes the importance that Puerto Rican children and students have in our democratic system; therefore, it enhances the protections that the Commonwealth of Puerto Rico has the obligation to provide for its citizens.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF PUERTO RICO:

Section 1.— Subsection 9 of Section 3 of Act No. 195-2012, known as the “Puerto Rico Student Bill of Rights,” is hereby amended to read as follows:

“Section 3.- General Student Rights.

All persons have the right to education. The education to be provided by the State shall be free for all students of the Public Education System. Elementary and secondary education shall be compulsory. All students shall be guaranteed equal protection of the laws and rights granted by the U.S. Constitution, Federal Laws, the Constitution of Puerto Rico, and other applicable laws, regulations, and ordinances. Without it being construed as a limitation, students shall have the following rights:

- 1) ...
- 2) ...

- 3) ...
- 4) ...
- 5) ...
- 6) ...
- 7) ...
- 8) ...
- 9) Student Education Records and Conduct in School: Privacy, Access, and Disclosure

Education records and other related documents as well as the performance, conduct, attendance, health, interaction with other members of the school community, personal appearance, personal care, and the attention of parents or guardians, or any other fact or circumstance involving the student within the school grounds shall be confidential. The records and related documents shall be kept in the custody of the School Principal.

No official of the Department of Education shall be authorized to disclose, by any means, the information that has been determined to be confidential by virtue of this Act, unless the father or mother with parental rights or the legal guardian has issued an express and written consent. The student, father, mother with parental rights, or custodians and guardians shall have the right to request a copy of the education record. Access to these records shall be subject to the pertinent laws on the protection of confidential documents; persons not listed in this subsection shall be denied access to the student's education records, unless there is a court order to such effect.

The prohibition to disclose confidential information does not include information shared by officials of the Department of Education, the Department of the Family, and the Department of Justice, or any other government entity in the course and performance of their duties, or any information requested by a court

order. Moreover, the disclosure of information to acknowledge the academic achievements of the student is hereby exempt from this limitation.

...”

Section 2.— Section 5 of Act No. 195-2012, known as the “Puerto Rico Students Bill of Rights,” is hereby amended to read as follows:

“Section 5.- Provisional Rules of Law and Penalties.

The Court of First Instance, Municipal Court, shall have primary jurisdiction over the issues germane to provisional rules of law to enforce the foregoing Act; including, without being limited to, protection orders, orders to cease and desist, orders to enforce compliance of the rights and obligations set forth herein, or that are granted or required by any other law. The proceedings pursuant to this Act shall be of a provisional nature until otherwise provided by the Superior Court of the Court of First Instance, or if it were to be revoked by the Court of Appeals or by a higher court through a civil appeal.

The Court, prior to the pertinent proceedings, shall issue any order, resolution, or ruling that may be necessary to guarantee the rights claimed by the student or his representative; or the duties that the Institution claims to the student, his custodian, guardian, or parent holding parental rights, except in the cases of debt collection.

Failure to comply with a court order pursuant to this Act shall be sanctioned with civil contempt. The Department of Education and the Administrative Office of the Courts shall provide students access to the rights herein granted in order to fulfill the provisions of this Act. This process shall be speedy and once the complaint has been filed with the court, the claimant shall be heard *ex-parte* as soon as possible, and a provisional ruling shall be issued if deemed necessary by the judge. If an *ex-parte* provisional ruling is issued or if the court fails to issue it, but deems it necessary to hear the other party, the respondent shall be summoned within a term not to exceed five (5) calendar days. The provisional rules of law, or the resolutions

or orders issued by the judge may be for a definite or indefinite period as ruled by the court or until the Court of First Instance, Superior Court, or a higher court provides otherwise.

Furthermore, any person who violates the provisions of subsection 9 of Section 3 of this Act shall be guilty of a misdemeanor punishable by imprisonment for a term not to exceed six (6) months, a fine of not less than five hundred dollars (\$500) nor greater than five thousand dollars (\$5,000), or both penalties at the discretion of the court, in addition to the administrative fines that the Department of Education may impose pursuant to its regulations.

Notwithstanding the preceding paragraph, this Section shall not be applicable to cases involving special education.

Section 3.— The Department of Education shall temper the regulations in effect in order to comply with the provisions of this Act.

Section 4.— This Act shall take effect immediately after its approval.

CERTIFICATION

I hereby certify to the Secretary of State that the following **Act No. 35-2015 (H. B. 1357)** of the **5th Regular Session** of the **17th Legislative Assembly of Puerto Rico**:

AN ACT to amend Subsection 9 of Section 3 and Section 5 of Act No. 195-2012, known as the “Puerto Rico Student Bill of Rights,” in order to clarify the scope of the confidentiality policy regarding education records and the conduct and appearance of the student in the school facilities; and to establish penalties for persons who violate the confidentiality principle; and for other pertinent purposes.

has been translated from Spanish to English and that the English version is correct.

In San Juan, Puerto Rico, on this 4th day of September, 2018.

Orlando Pagán-Ramírez
Director