



THE STATE
of **ALASKA**
GOVERNOR MIKE DUNLEAVY

Department of Law
OFFICE OF THE ATTORNEY GENERAL

1031 West 4th Avenue, Suite 200
Anchorage, AK 99501
Main: 907.269.5100
Fax: 907.276.3697

November 16, 2023

Deena M. Bishop
Commissioner of DEED
550 West 7th Avenue, Suite 810
Anchorage, AK 99501
Email: deed.commissioner@alaska.gov

Re: Interpretation of AS 14.03.016

Dear Commissioner Deena Bishop:

You asked about the meaning of AS 14.03.016(a)(3), which requires schools to provide “parent notification not less than two weeks before any activity, class or program that includes content involving human reproduction or sexual matters is provided to a child.” Your specific question is whether this statute requires parental notification before children are taught about gender identity.

The answer is yes. The Alaska Supreme Court interprets statutes according to the statute’s text, purpose, and legislative history. As explained below, these interpretive tools show that the statute requires parental notification before children are taught about gender identity.

Analysis

Alaska’s parental notification statute, AS 14.03.016, was passed in 2016. The statute mandates that school boards “adopt policies to promote the involvement of parents in the school district’s education program.”¹ One way the statute achieves this goal is by requiring schools to have procedures for notifying parents “two weeks before any activity, class, or program that includes content involving human reproduction or sexual matters is provided to a child.”² The legislature did not define the phrase “content involving human reproduction or sexual matters,” but it expressly excluded two things from the definition: coursework about (1) “sexual abuse and sexual assault awareness and prevention training required under AS 14.30.355” and (2) “dating violence and abuse awareness and prevention training required under AS 14.30.356.”³

¹ AS 14.03.016(a).

² AS 14.03.016(a)(3).

³ AS 14.03.016(d)(2).

The phrase “gender identity” refers generally to “a person’s innate sense of their gender.”⁴ It is typically used “in contexts where [gender identity] is contrasted with the sex registered . . . at birth.”⁵ And according to the Ninth Circuit, a person’s sex “is typically assigned at birth based on an infant’s external genitalia.”⁶ Thus, answering questions about sex and gender identity requires discussion of “sex-related characteristics,” such as “internal reproductive organs,” “chromosomes,” “genitals,” “organs like testes or ovaries,” and “hormone production.”⁷

Deciding whether Alaska’s parental notification statute applies to coursework about gender identity requires interpreting the statute according to the tools of statutory interpretation used by the Alaska Supreme Court. The Court interprets statutes “according to reason, practicality, and common sense.”⁸ This involves looking at “the meaning of the statute’s language, its legislative history, and its purpose.”⁹ The text is most important, so the “plainer the statutory language is, the more convincing the evidence of contrary legislative purpose or intent must be.”¹⁰

The statute’s plain language supports the position that parents must receive notice before their child is taught about gender identity. For one, the phrase “content involving human reproduction or sexual matters” is broad. Regardless of its precise scope, any common-sense understanding of the phrase includes topics necessarily involving human genitalia and reproductive organs because these facilitate “human reproduction” and are central to “sexual matters.” One such topic is gender identity because it is about how a person relates to their sex assigned at birth, which is inextricably tied to a person’s “external genitalia.”¹¹

The statutory exceptions to “content involving human reproduction or sexual matters” that were carved out by the legislature reinforce the conclusion that the phrase includes gender identity coursework.¹² Most importantly, the exceptions are very limited. They apply only to “sexual abuse and sexual assault awareness” training and to “dating violence and abuse

⁴ *Gender Identity*, OXFORD LANGUAGES (2023); see *Hecox v. Little*, 79 F.4th 1009, 1016 (9th Cir. 2023) (“Gender Identity is the term used to describe a person’s sense of being male, female, neither, or some combination of both.” (internal quotation marks omitted)).

⁵ *Gender Identity*, OXFORD LANGUAGES (2023)

⁶ *Hecox*, 79 F.4th at 1016. The Alaska Supreme Court has not discussed the phrase “gender identity” in depth.

⁷ *Id.*

⁸ *Murphy v. Fairbanks N. Star Borough*, 494 P.3d 556, 563 (Alaska 2021) (quoting *Vandenberg v. State, Dep’t of Health & Soc. Servs.*, 371 P.3d 602, 606 (Alaska 2016)).

⁹ *Id.* (quoting *Vandenberg*, 371 P.3d at 606).

¹⁰ *Id.* (quoting *Gov’t Emps. Ins. Co. v. Graham-Gonzalez*, 107 P.3d 279, 284 (Alaska 2005)).

¹¹ See *Hecox*, 79 F.4th at 1016.

¹² See AS 14.03.016(d)(2).

awareness” training.¹³ If the legislature had intended to narrow the definition of “human reproduction or sexual matters” any further, it could have expressly excluded other topics. Indeed, it could have specifically excluded gender identity. But the legislature chose not to do so. Also, the coursework excluded from the parental notification statute is statutorily required to be taught, so parents already have notice about it.¹⁴ This reduces the likelihood that they will be deprived of their right to “withdraw th[eir] child from [such] activity, class, or program.”¹⁵ Gender identity coursework, on the other hand, is not statutorily required. So without prior notice, parents may be unable to make informed decisions about that aspect of their child’s education. The fact that legislature chose not to expressly exclude gender identity from the parental notification statute is further evidence that notice is required.¹⁶

The purpose of the statute is to maximize parents’ ability to participate in their child’s education, which is advanced by giving notice about gender identity coursework. Under both the Alaska and United States constitution, parents have a fundamental right to raise their children.¹⁷ The parental notification statute promotes that constitutional right by giving parents knowledge to help them make informed decisions about their child’s education.¹⁸ Nearly every section of the statute empowers parents, often by giving them broad access to information about coursework; no aspect of the statute narrows the scope of parents’ access to information. Reading the statute to require notice of gender identity coursework thus aligns with the purpose of the statute.

Interpreting AS 14.03.016 broadly also creates harmony with related Alaska law.¹⁹ For example, AS 14.30.361 discusses sexual-health related coursework as well and says that before “materials related to sex education, human reproduction education, or human sexuality education may be used in a class” they must be “available for parents to review.” This too is about maximizing parents’ access to information about their child’s education. The parental notification statute works alongside this one to ensure that parents know that they can review materials about their child’s education. Within this framework, it would make little sense to require schools to make materials about gender identity coursework available for review yet not give parents notice about them.

¹³ *Id.*

¹⁴ AS 14.30.355; AS 14.30.356.

¹⁵ AS 14.03.016(a)(2).

¹⁶ *See Trapp v. State Off. of Pub. Advoc.*, 112 P.3d 668, 674 n.16 (Alaska 2005).

¹⁷ *Washington v. Glucksberg*, 521 U.S. 702, 720 (1997) (recognizing fundamental right “to direct the education and upbringing of one’s child”); *J.M.R. v. S.T.R.*, 15 P.3d 253, 257 (Alaska 2001) (“The right to the care and custody of one’s own child is a fundamental right recognized by both the federal and state constitutions.”).

¹⁸ *See* AS 14.03.016 (titled “A parent’s right to direct the education of the parent’s child”).

¹⁹ *Hübschman ex. rel. Welch v. Valdez*, 821 P.2d 1354, 1363 (Alaska 1991) (seeking to “harmonize the two statutes [at issue] if possible”).

The legislative history does not contradict the text or purpose of the statute. Because the text and purpose of the statute both point toward a broad definition of “content involving human reproduction or sexual matters,” contrary legislative history would need to be direct and unequivocal.²⁰ It is not. The legislature did not meaningfully discuss the possibility of carving out gender identity coursework from the broad definition of “human reproduction or sexual matters.” Rather, the bill aimed to give parents “a full understanding of what to expect” from their child’s health-related education.²¹ This is further evidence that the legislature meant for the statute’s broad, plain meaning to apply as written.

In sum, the most important tools of statutory interpretation support the position that the phrase “content involving human reproduction or sexual matters,” as used in the parental notification statute, includes coursework about gender identity.²² The text is broad, and gender identity coursework necessarily involves topics related to reproductive organs. The purpose of the statute is to advance parents’ rights to be involved in the education of their child, which notice about gender identity coursework facilitates. And there is no meaningful legislative history to the contrary. For these reasons, the parental notification statute applies to coursework about gender identity.

Sincerely,

Treg Taylor
Attorney General

²⁰ See *State v. Fyfe*, 370 P.3d 1092, 1095 (Alaska 2016) (“[T]he plainer the statutory language is, the more convincing the evidence of contrary legislative purpose or intent must be.” (quoting *Adamson v. Mun. of Anchorage*, 333 P.3d 5, 11 (Alaska 2014))).

²¹ Minutes, House Ed. Standing Comm. Hearing on S.B. 89, 29th Leg., 2d Sess., 8:30:02 am (Mar. 21, 2016) (testimony of Sen. Michael Dunleavy). The parental notification statute began in S.B. 89 and was moved to H.B. 156. Minutes, Senate Ed. Standing Comm. Hearing on H.B. 156, 29th Leg., 2d Sess., 6:17:53 pm (Apr. 12, 2016) (testimony Christa McDonald, staff to Sen. Michael Dunleavy) (explaining that H.B. 156 “takes components of S.B. 89 regarding parental rights [and] would also provide a notice to parents two weeks before sex education”).

²² AS 14.03.016(a)(3).