

Even the Law Recognizes Parents Know Best
U.S. Constitution, 14th Amend, Due Process
US Code and CFRs
ORS & OAR

“*The child is not the mere creature of the state...*[the state of Oregon, by forcing parents to place their children in public school] unreasonably interfere[d] with *the liberty of parents and guardians* to direct the upbringing of their children under their control.”

-*Pierce v. Society of Sisters* (1925)

“It is cardinal with us that the custody, care and nurture of the children reside *first in the parents*, whose primary functions and freedom include preparation for obligations *the state can neither supply nor hinder.*”

-*Prince v. Massachusetts* (1944)

“The primary role of the parents in the upbringing of their children is now established beyond debate as an enduring American tradition...[*Parents’* duty to prepare children for] *additional obligations...include the inculcation of moral standards, religious beliefs, and elements of good citizenship.*”

-*Wisconsin v Yoder* (1972)

“Our decisions establish that the Constitution protects *the sanctity of the family* precisely because the institution of the family is deeply rooted in this Nation’s history and tradition. *It is through the family that we inculcate and pass down many of our most cherished values, moral and cultural.*

-*Moore v. East Cleveland* (1977)

“[O]ur constitution long ago rejected any notion that a child is a mere creature of the State and, on the contrary, asserted that *parents have the right coupled with the high duty* to recognize and prepare [their children] for additional obligations.”

-*Troxel v. Granville* (2000)

Family Educational Rights & Privacy Act (FERPA), 20 USC §1232g (with regulations at 34 CFR 99) protects privacy of family records and information (e.g., surveys)

Protection of Pupil Rights Act, 20 USC §1232h requires all instructional materials, surveys, etc. to be available for inspection by parents and guardians

Oregon

Oregon parents/guardians and students have the constitutional and statutory **right to opt out** of objectionable human sexuality or HIV/AIDS curriculum, including for accommodation of religious beliefs (See 14th Amendment; ORS 336.035(2); OAR 581-022-1440(5), 581-022-1910(1))

Parents and guardians have the **right to inspect** the instructional materials to be used before or during the time the course is taught (See ORS 336.035(2))

Parents and guardians have the **right to be notified in advance** of any instruction on human sexuality or HIV/AIDS (See ORS 336.035(2))

Refusal to take part or participate in any class, course, survey, assembly or school-sponsored activity on human sexuality or HIV/AIDS **shall not be reason for harassment, suspension or expulsion of a student** (See ORS 336.465)

School teachers or staff who do not want to participate in presentation of human sexuality or HIV/AIDS curriculum **cannot be sanctioned, disciplined or otherwise compelled** to participate against their conscience (See First Amendment; ORS 336.035(3))

A parent or guardian has the **right to request disclosure of public records** relating to presentation of human sexuality or HIV/AIDS instruction and other subjects under federal and state law (5 USC §552; ORS 192.420, 192.440)

A parent or guardian **can require a school district's attorney to generate a legal opinion** explaining how the school district is addressing the legal interests of all parties in connection with human sexuality or HIV/AIDS instruction and other subjects.

What law supersedes all other?

Generally, but not always, federal law trumps state law under supremacy principles, especially in the area of infringing individual rights. Statutes (passed by Congress or the Legislature) trump administrative rules (drafted by executive agencies), but both have the force of law; in the event of conflict, administrative regulations must defer to statutes. All statutes and administrative rules obviously defer to federal and state constitutions.

Legal status of school districts

All school districts are bodies corporate, and the district school board is authorized to transact all business coming within the jurisdiction of the district and to sue and be sued. Pursuant to law, district school boards have control of the district schools and are responsible for educating children residing in the district.
(ORS 332.072)

“Legalese” Defined

Due Process of Law

A fundamental principle of fairness. All legal procedures set by statute and court practice, including notice of rights, must be followed for each individual so that no prejudicial or unequal treatment will result. The universal guarantee of due process is in the Fifth Amendment to the U.S. Constitution, which provides "No person shall...be deprived of life, liberty, or property, without due process of law," and is applied to all states by the 14th Amendment.

14th Amendment

The Fourteenth Amendment of the U.S. Constitution prohibits anyone, by virtue of public position under a state government, to deprive another of property, life, or liberty, without due process of law, or deny or take away the equal protection of the laws. The Fourteenth Amendment prohibits states from violating an individual's rights of due process and equal protection.

Code of Federal Regulations (C.F.R)

Congress created the Code of Federal Regulations (C.F.R.) as a more permanent and better organized source of federal regulations. CFR organizes general and permanent rules and regulations published in the Federal Register by the executive departments and agencies of the U.S. Federal government. Each volume is updated annually according to the changes implemented.

Code

A collection of laws, rules or regulations that are systematically arranged. Code is not only a compilation of already existing statutes, but also of the unwritten law on any subject composed of materials available from all sources. In making a code, new laws will be included and existing old laws may be repealed to constitute a complete system.

Examples:

Family Educational Rights & Privacy Act (FERPA), 20 USC §1232g (with regulations at 34 CFR 99) protects privacy of family records and information (e.g., surveys)

Protection of Pupil Rights Act, 20 USC §1232h requires all instructional materials, surveys, etc. to be available for inspection by parents and guardians.

Case Law

The law created by judges when deciding individual disputes or cases. It is non-statutory law. They are legal principles developed through the reported decisions of selected appellate and other courts which make new interpretations of the law which can be cited as precedents.

Example:

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Statute

The law passed by a legislative body.

Administrative Rules

Agency regulations that have the force and effect of law. Generally these rules elaborate the requirements of a law or policy.

Difference between ORS and OAR

Oregon Revised Statutes (ORS) – defined by the Oregon Legislature

Oregon Administrative Rules (OAR) – Defined by Agency/"Experts"

Examples:

Be given the opportunity to examine the instructional materials to be used in any class, course, assembly or school-sponsored activity (**ORS 336.035(2)**)

Legal status of school districts (**ORS 322.072**)

K-12 Human Sexuality Education (**OAR 581-022-1440**) *this OAR designed by OR Depart of Ed.