

**SFA**

BILL ANALYSIS

Senate Fiscal Agency

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MAY 16 1990

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Senate Bill 714 (as passed by the Senate)  
Sponsor: Senator Ed Fredricks  
Committee: Education and Mental Health

Date Completed: 3-23-90

**RATIONALE**

Although the Michigan Freedom of Information Act, the State School Code, and various Federal statutes provide for parental access to instructional materials used in public schools, some parents reportedly have experienced difficulties in obtaining information about the content of courses being offered in public schools and in gaining access to textbooks and instructional materials for their review. Some people believe that it is a parent's inherent right to know what his or her child is being taught, and that a specific law is needed to guarantee that right.

**CONTENT**

The bill would amend the School Code to provide that a pupil aged 18 or older, or a parent or legal guardian of a pupil under 18, upon written or oral request and within a reasonable period of time after the request was made, would have to be informed of the content of a course and could examine textbooks and other classroom materials provided to the pupil or materials presented to the pupil in the classroom. The bill specifies that it would not require a school board to permit pupil or parental examination of test questions and answers, scoring keys, or other examination instruments or data used to administer an academic examination. Each school board would be required to establish policies and procedures to implement the bill.

Proposed MCL 380.1174a

**BACKGROUND****Federal Law**

The Federal statute that gives parents the right to examine instructional materials used in public schools was enacted in the 1974 General Education Provision Act. Section 439(a) of Public Law 93-380 gives parents a right to inspect instructional materials used in research or experimental programs in schools receiving Federal funds. Under that section, when children are enrolled in programs that are designed to explore or develop new or unproven teaching methods or techniques, all instructional material must be made available for parental inspection. Instructional material includes teachers' manuals, films, tapes, and other "supplementary instructional material" used with any "research or experimentation program", which means any program designed to develop new or unproven teaching methods. A provision added in 1978 (the "Hatch Amendment") applies to psychiatric testing of students and allows parents to review certain Federally funded curriculum materials and to withdraw their children from Federally funded "experimental" or "psychological and psychiatric" school programs.

The U.S. Department of Education also has stated that Federal block grant programs conducted by public schools are subject to Section 439. When a public school activity is supported by Federal funds, such as special education, impact, aid, vocational education, or other Federal dollars, the school must comply with Section 439(a) and give parents the

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opportunity to inspect all instructional materials used in conjunction with any research or experimentation program.

The Federal statute and regulations permit parents to file a complaint when a public school does not make instructional material available for parental inspection. The complaint may be filed directly with the U.S. Department of Education, which is to determine whether the materials are being used as part of a "new or unproven" teaching method or technique. If the complaint is upheld and the school does not comply with the Department's recommendations for compliance, the Secretary of Education may withhold or terminate Federal funds.

### Freedom of Information Act

Michigan's Freedom of Information Act sets requirements for the disclosure of public records by public bodies, including boards of education for local and intermediate school districts. Textbooks and other instructional materials fit within the definition of a "public record", which is a writing "prepared, owned, used in the possession of, or retained by" a public body, such as a school board, in the performance of an official function. A "writing" includes printed material such as letters, words, pictures, symbols, and maps (MCL 15.232).

As a general rule, any person may ask to inspect, copy, or receive a copy of a public record unless the record is specifically exempt from disclosure. Test questions and answers, scoring keys, and other examination instruments or data are exempt. In addition, the Attorney General has ruled that copyrighted materials may not be copied or distributed by a public agency in violation of the Federal Copyright Act. When copyrighted material is being used, the school may be required to make the material available for inspection, but cannot be compelled to furnish copies to the parent.

### State School Code

Textbook Selection. While several provisions in the School Code deal with a parent's right to inspect classroom materials, Michigan does not have a statewide textbook selection process. The board of education for each school district is directed in the Code to "select, approve, and

purchase the textbooks to be used by the pupils of the schools on the subjects taught in the district" (MCL 380.1422). "Textbook" is defined as a book containing "a presentation of principles of a subject" or "a literary work relevant to the study of a subject required for the use of classroom pupils" (MCL 380.1421).

Sex Education. A board of education may offer instruction in sex education, including family planning, human sexuality, and the emotional, physical, psychological, hygienic, economic, and social aspects of family life. Before a student can be enrolled in a class in which family planning or reproductive health is a topic, the pupil's parent or guardian must be given advance notice of "the course and the content of the course" and must be given a "prior opportunity to review the materials to be used in the course" (MCL 380.1507).

Personality Tests. The use of personality tests, which are designed to assess an individual's behavioral characteristics, in school programs is limited by State law (MCL 380.1172). Rules promulgated by the State Board of Education specify that, "Personality tests may be administered as part of a school project or program only after due notice in writing is given to the parent or guardian that such tests are being contemplated for the pupil. No test shall be given to any child whose parent or guardian objects to the test in writing within 10 days after written notice is mailed to the parent" (R 340.1101).

Special Education. Michigan's special education programs are regulated through a combination of Federal and State requirements. Before a child is placed in a special education program, an individual evaluation of the child's educational needs must be conducted. Federal regulations require that parental consent be obtained before a preplacement evaluation is conducted. State rules also require that parents be notified in writing of their right to inspect and review all education records dealing with the identification, evaluation, program (the types and services), educational placement, and provision of an appropriate education for handicapped students.

Bilingual Education. School boards are required to notify parents about a bilingual education program before a child is enrolled in

the program. The notice must contain a description of the program's "purposes, method, and content" and must inform parents that they have the right to visit bilingual instruction classes (MCL 380.1155). The State Board also must "study, review, and evaluate textbooks and instructional materials, resources, and media for use in bilingual instructional programs" (MCL 380.1158).

### **FISCAL IMPACT**

The bill would result in minimal, State-mandated costs to local school districts for providing information relative to course content or materials.

### **ARGUMENTS**

#### **Supporting Argument**

While the State School Code specifically directs local school boards to select, approve, and purchase textbooks, there is no State law that expressly allows parents to review course materials. The bill would give direct access to these materials and provide greater opportunities for parents and guardians to become more aware of courses being offered and materials being used to instruct their children. The bill also would ensure that a request for review was not ignored by the local school district since a response would have to be given "within a reasonable period of time".

#### **Supporting Argument**

The bill would expand parental rights under existing State laws by extending the right to examine textbooks and materials to include those used in any class or course. The bill would put into law the basic right of parents and guardians to know what their children are being taught.

#### **Supporting Argument**

The bill would maintain the concept of local control for school districts by requiring them to establish policies and procedures to implement the bill, rather than dictating standards to them.

#### **Opposing Argument**

The bill is too open-ended in that it would permit parental scrutiny of materials that are the exclusive property of teachers and are part of their own notes, work products, and

experiences. Such materials might include a personal slide collection of travel and work in a foreign country, or records and pictures of art objects. Demands to make these items readily available for inspection by parents could simply overwhelm the teacher or guest, and discourage the presentation. The over-reaching nature of the bill also represents a distrust of the people who are hired and licensed to teach the State's schoolchildren. Teachers are professionals whose integrity should be respected; teachers should not be subjected to a variety of beliefs as to the suitability of what they read, look at, or use to prepare and present a lesson. Without an exception in the bill for materials that are a teacher's work product, or that are designated for the teacher's use only and are not available to students as part of classroom instruction, the bill would amount to a license for obstructionism and meddling.

#### **Opposing Argument**

The bill is not needed. Current Federal and State law gives parents the opportunity, under certain circumstances, to review instructional materials. Besides, local school boards are elected to represent the views of the community they represent, and are required under State law to approve instructional materials. If parents or guardians have concerns about instructional materials being used in the local schools, they should address their concerns to their elected representatives on the school board. In addition, very few local districts prohibit parents from reviewing course materials, and avenues for redress already exist.

#### **Opposing Argument**

The bill could have the effect of preventing a teacher from sharing any material with a class unless it were part of the course content, which could be quite burdensome for most schools. Instead, the bill should be limited to permit parents, guardians, or students 18 years of age or older to examine a course outline and textbooks provided to the pupil or from which the pupil is taught. With this approach, the right to review material still would be maintained, but the bill would not have a suffocating effect on schools.

**Response:** The bill does not contain any express prohibition against a teacher sharing with a class any materials that were not part of the course content.

### **Opposing Argument**

The bill specifically should allow examination of teachers' manuals as well as textbooks, since teachers' manuals often contain more instructional information than may be included in students' textbooks.

**Response:** Arguably, teachers' manuals could be included in a general application of the bill. Although some teachers' manuals may contain material that is presented to the classroom, they also may contain answers to tests that are contained in the companion textbooks for students. It is not clear if, in these cases, the test answers could be removed before parents, guardians or students 18 years of age or older reviewed the manuals.

### **Opposing Argument**

Around the country there have occurred incidents in which various interest groups have tried to impose their beliefs and philosophies on local school districts. This has resulted in calls to ban certain books from schools because they contain material that these groups consider objectionable. The bill would serve only to aid these groups in foisting their viewpoints on the local schools.

**Response:** Admittedly, these incidents have taken place, but the bill actually could help to prevent them from getting out of hand by enabling parents to become more involved and exercise greater oversight. In some school districts, decisions on the curriculum have become the prerogative of the administration and staff with only a cursory review by the school board. This has resulted in members of local communities questioning the appropriateness and quality of educational programs. By requiring local districts to establish policies and procedures to handle requests from parents, guardians, and students 18 years of age or older, the bill would benefit districts that have no formal method to deal with such requests. As a result of this legislation, teachers likely would become more conscientious in their planning and teaching, and school officials more sensitive to parental and community concerns.

### **Opposing Argument**

A restriction should be placed in the bill to prevent teachers from having to sit down with parents to go over the teachers' notes. The bill does not specifically state that it would be limited to "written" materials presented in a

classroom.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.