

Parents' Rights Under the Law

Parents have the right to oversee the education of their children.

- Courts have long recognized the freedom of parents to direct and control the education and upbringing of their children. Pierce v. Society of Sisters, 268 U.S. 510 (1925).
- New York Courts have considered this right to be “fundamental”; any violation of this right requires that the state establish an “overriding necessity” (Alfonso v. Fernandez, 195 A.D.2d 46 (2nd Dept., 1993)).
- Federal law (20 USC §1232h) guarantees that parents have the right to inspect all instructional materials being used in the classroom.

Parents have the right to protect their children from offensive subjects.

- New York State's Education Law §3204(5) states that students may opt out of health and hygiene classes -- including sex education -- if they conflict with the religion of their parents or guardians. The law requires that this conflict "must be certified by a proper representative of their religion", such as a pastor or minister.
- The New York State Code of Rules and Regulations ("NYCRR") that govern health education also contain provisions that protect parents and children:
 - No pupil shall be required to receive instruction concerning the methods of prevention of AIDS if the parent or legal guardian of such pupil has filed with the principal of the school which the pupil attends a written request that the pupil not participate in such instruction, with an assurance that the pupil will receive such instruction at home." 8 NYCRR §135.3(c)(2)(i).
 - Condoms may not be made generally available to students. Any condom availability policies must:
 - be submitted to the school district's AIDS advisory council for recommendations;
 - make condoms available only to students who participate in AIDS education;
 - provide each student who receives condoms with accurate and complete personal health guidance; and
 - assure that such guidance is provided by "health service personnel or school personnel trained and supervised by competent health professionals or health educators"
 - These requirements can be found in 8 NYCRR §135.3(c)(2)(ii)
- Schools may not make condoms available to their students without prior parental consent or after notice to parents that gives them the ability to opt out. Alfonso v. Fernandez, 195 A.D.2d 46 (2nd Dept., 1993) (applying the parental consent provisions of New York Public Health Law §2504).