

First Regular Session of the 123rd General Assembly (2023)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2022 Regular Session of the General Assembly.

HOUSE ENROLLED ACT No. 1447

AN ACT to amend the Indiana Code concerning education.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 20-23-18-3, AS AMENDED BY P.L.125-2022, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 3. (a) Except as provided in subsection (c), the Muncie Community school corporation is subject to all applicable federal and state laws.

(b) If a provision of this chapter conflicts with any other law, including IC 20-23-4, the provision in this chapter controls.

(c) Notwithstanding subsection (a), to provide all administrative and academic flexibility to implement innovative strategies, the Muncie Community school corporation is subject only to the following IC 20 and IC 22 provisions:

(1) IC 20-26-5-10 (criminal history).

(2) IC 20-26-21 (personal analyses, evaluations, or surveys by third party vendors).

~~(2)~~ **(3)** IC 20-28-5-8 (conviction of certain felonies or misdemeanors; notice and hearing; permanent revocation of license; data base of school employees who have been reported).

~~(3)~~ **(4)** IC 20-28-10-17 (school counselor immunity).

~~(4)~~ **(5)** IC 20-29 (collective bargaining) to the extent required by

HEA 1447 — CC 1



subsection (e).

~~(5)~~ **(6)** IC 20-30-3-2 and IC 20-30-3-4 (patriotic commemorative observances).

~~(6)~~ **(7)** The following:

(A) IC 20-30-5-0.5 (display of the United States flag; Pledge of Allegiance).

(B) IC 20-30-5-1, IC 20-30-5-2, and IC 20-30-5-3 (the constitutions of Indiana and the United States; writings, documents, and records of American history or heritage).

(C) IC 20-30-5-4 (system of government; American history).

(D) IC 20-30-5-5 (morals instruction).

(E) IC 20-30-5-6 (good citizenship instruction).

~~(7)~~ **(8)** IC 20-32-4, concerning graduation requirements.

~~(8)~~ **(9)** IC 20-32-5.1, concerning the Indiana's Learning Evaluation Assessment Readiness Network (ILEARN) program.

~~(9)~~ **(10)** IC 20-32-8.5 (IRead3).

~~(10)~~ **(11)** IC 20-33-2 (compulsory school attendance).

~~(11)~~ **(12)** IC 20-33-8-16 (firearms, ~~and~~ **deadly weapons, or destructive devices**).

~~(12)~~ **(13)** IC 20-33-8-19, IC 20-33-8-21, and IC 20-33-8-22 (student due process and judicial review).

~~(13)~~ **(14)** IC 20-33-7 (parental access to education records).

~~(14)~~ **(15)** IC 20-33-9 (reporting of student violations of law).

~~(15)~~ **(16)** IC 20-34-3 (health and safety measures).

~~(16)~~ **(17)** IC 20-35 (concerning special education).

~~(17)~~ **(18)** IC 20-39 (accounting and financial reporting procedures).

~~(18)~~ **(19)** IC 20-40 (government funds and accounts).

~~(19)~~ **(20)** IC 20-41 (extracurricular funds and accounts).

~~(20)~~ **(21)** IC 20-42 (fiduciary funds and accounts).

~~(21)~~ **(22)** IC 20-42.5 (allocation of expenditures to student instruction and learning).

~~(22)~~ **(23)** IC 20-43 (state tuition support).

~~(23)~~ **(24)** IC 20-44 (property tax levies).

~~(24)~~ **(25)** IC 20-46 (levies other than general fund levies).

~~(25)~~ **(26)** IC 20-47 (related entities; holding companies; lease agreements).

~~(26)~~ **(27)** IC 20-48 (borrowing and bonds).

~~(27)~~ **(28)** IC 20-49 (state management of common school funds; state advances and loans).

~~(28)~~ **(29)** IC 20-50 (concerning homeless children and foster care children).



~~(29)~~ **(30)** IC 22-2-18, before its expiration on June 30, 2021 (limitation on employment of minors).

(d) The Muncie Community school corporation is subject to required audits by the state board of accounts under IC 5-11-1-9.

(e) Except to the extent required under a collective bargaining agreement entered into before July 1, 2018, the Muncie Community school corporation is not subject to IC 20-29 unless the school corporation voluntarily recognizes an exclusive representative under IC 20-29-5-2. If the school corporation voluntarily recognizes an exclusive representative under IC 20-29-5-2, the school corporation may authorize a school within the corporation to opt out of bargaining allowable subjects or discussing discussion items by specifying the excluded items on the notice required under IC 20-29-5-2(b). The notice must be provided to the education employment relations board at the time the notice is posted.

SECTION 2. IC 20-26-5.5 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2024]:

Chapter 5.5. School Library

Sec. 1. (a) The governing body of a school corporation or charter school shall establish a:

(1) procedure for each school to prepare a catalogue of materials available in the school library;

(2) procedure for each school to allow a:

(A) parent or guardian of a student enrolled in the school;

or

(B) community member:

(i) within the school district; or

(ii) within the school district in which the charter school is located;

to submit a request to remove material from the school library that is obscene (as described in IC 35-49-2-1) or harmful to minors (as described in IC 35-49-2-2); and

(3) response and appeal procedure for each school to respond to a removal request submitted by a parent, guardian, or community member described in subdivision (2).

(b) The response and appeal procedure established under subsection (a)(3) must require the governing body to review the request at the next public meeting.

Sec. 2. The governing body of a school corporation or charter school shall:

(1) publish on the website of each school; and



(2) make available in hard copy for an individual upon request;
the catalogue of material available in the school library and each policy established under this chapter.

Sec. 3. A school corporation or charter school may not make available materials that contain:

- (1) obscene matter (as described in IC 35-49-2-1); or
 - (2) matter harmful to minors (as described in IC 35-49-2-2);
- within the school library.

SECTION 3. IC 20-26-21 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]:

Chapter 21. Personal Analyses, Evaluations, or Surveys by Third Party Vendors

Sec. 1. As used in this chapter, "qualified school" means the following:

- (1) A school maintained by a school corporation.
- (2) A charter school.
- (3) A laboratory school established under IC 20-24.5-2.
- (4) The Indiana School for the Blind and Visually Impaired established by IC 20-21-2-1.
- (5) The Indiana School for the Deaf established by IC 20-22-2-1.

Sec. 2. This chapter does not apply to the following:

- (1) An academic test or academic assessment, scoring keys, or other tools directly related to measuring a student's academic performance in understanding a particular curricular subject matter, as prescribed by the department.
- (2) A career aptitude or career interest survey.
- (3) An assessment or screening instrument administered by a third party employed:
 - (A) psychologist licensed under IC 25-33; or
 - (B) social worker, clinical social worker, marriage and family therapist, or mental health counselor licensed under IC 25-23.6;

if the third party provider described in clause (A) or (B) is referred by school personnel in a crisis situation in which the school personnel and the third party provider reasonably believe that the student is in immediate danger of self harm, harming another person, or experiencing harm resulting from abuse or neglect.

- (4) An assessment, screening instrument, or evaluation survey



administered by a third party employed:

(A) psychologist licensed under IC 25-33; or

(B) social worker, clinical social worker, marriage and family therapist, or mental health counselor licensed under IC 25-23.6;

who has received a consent for services from a student, if the student is an adult or emancipated minor, or parent of a student, if the student is an unemancipated minor.

(5) A survey or evaluation administered to a student of a school by a third party vendor that gauges or attempts to gauge student satisfaction with or participation in the school's programming, technology platform, or approved curriculum.

Sec. 3. If a school corporation or qualified school uses a third party vendor in providing a personal analysis, evaluation, or survey that reveals, identifies, collects, maintains, or attempts to affect a student's attitudes, habits, traits, opinions, beliefs, or feelings, the third party vendor and the school corporation or qualified school may not record, collect, or maintain the responses to or results of the analysis, evaluation, or survey in a manner that would identify the responses or results of an individual student.

Sec. 4. (a) This section does not apply to a personal analysis, evaluation, or survey for which consent is required under IC 20-30-5-17(b).

(b) Before a school corporation or qualified school may administer a personal analysis, evaluation, or survey described in section 3 of this chapter, the school corporation or qualified school must provide the parent of the student or the student, if the student is an adult or an emancipated minor, with a written request for consent for administration. A consent form provided to a parent of a student or a student under this subsection must accurately summarize the contents and nature of the personal analysis, evaluation, or survey that will be provided to the student and indicate that a parent of a student or an adult or emancipated minor student has the right to review and inspect all materials related to the personal analysis, evaluation, or survey. The written consent form may be sent in an electronic format. The parent of the student or the student, if the student is an adult or an emancipated minor, may return the consent form indicating that the parent of the student or the adult or emancipated student:

(1) consents to the personal analysis, evaluation, or survey; or

(2) declines the personal analysis, evaluation, or survey.

If a student does not participate in the personal analysis,



evaluation, or survey, the school corporation or qualified school shall provide the student with alternative academic instruction during the same time frame that the personal analysis, evaluation, or survey is administered.

(c) If the parent of the student or the student, if the student is an adult or an emancipated minor, does not respond to the written request provided by the school corporation or qualified school under subsection (b) within twenty-one (21) calendar days after receiving the request under subsection (b), the school corporation or qualified school shall provide the parent of the student or the student, if the student is an adult or an emancipated minor, a written notice requesting that the parent of the student, or the student, if the student is an adult or an emancipated minor, indicate, in a manner prescribed by the school corporation or qualified school, whether the parent of the student or the adult or emancipated student:

- (1) consents to the personal analysis, evaluation, or survey; or
- (2) declines the personal analysis, evaluation, or survey.

A notice provided to a parent of a student or a student under this subsection must accurately summarize the contents and nature of the personal analysis, evaluation, or survey that will be provided to the student and indicate that a parent of a student or an adult or emancipated minor student has the right to review and inspect all materials related to the personal analysis, evaluation, or survey. The notice may be sent in an electronic format. If the school corporation or qualified school does not receive a response within ten (10) days after the notice, the student will receive the personal analysis, evaluation, or survey unless the parent or the adult or emancipated student subsequently opts out of the personal analysis, evaluation, or survey for the student.

(d) Each school corporation or qualified school shall:

- (1) post a copy of a personal analysis, evaluation, or survey described in subsection (b) on the school corporation's or qualified school's website; and
- (2) send with each notice an explanation of the reasons that the school corporation or qualified school is administering the personal analysis, evaluation, or survey.

(e) The department and the governing body shall give parents and students notice of the parents' and students' rights under this section.

Sec. 5. A parent of a student or a student, if the student is an adult or emancipated minor, who is enrolled in a qualified school



may submit a complaint for a violation of this chapter under the grievance procedure maintained by the qualified school in accordance with section 6 of this chapter.

Sec. 6. Each qualified school shall establish and maintain a grievance procedure for the resolution of a complaint submitted by a parent of a student or student, if the student is an adult or emancipated minor, under section 5 of this chapter.

Sec. 7. The department shall:

- (1) develop guidance materials for school corporations and qualified schools to assist school corporations and qualified schools in implementing this chapter; and
- (2) post the guidance materials on the department's website.

Sec. 8. Nothing in this section prohibits qualified schools from administering state or federally required assessments.

Sec. 9. After June 30, 2023, if a school corporation or a qualified school contracts with a third party vendor to provide a personal analysis, survey, or evaluation described in section 3 of this chapter, the contract must include a provision stating that if the third party vendor does not comply with the requirements described in section 3 of this chapter, the third party vendor has committed a breach of contract.

SECTION 4. IC 20-33-1.5 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]:

Chapter 1.5. Neutrality Regarding Certain Activities

Sec. 1. As used in this chapter, "qualified school" has the meaning set forth in IC 20-26-21-1.

Sec. 2. As used in this chapter, "state agency" has the meaning set forth in IC 4-13-1.4-2.

Sec. 3. If a state agency, school corporation, or qualified school or an employee of a state agency, school corporation, or qualified school requires, makes part of a course, awards a grade or course credit, including extra credit, or otherwise incentivizes a student to engage in:

- (1) political activism;
- (2) lobbying; or
- (3) efforts to persuade members of the legislative or executive branch at the federal, state, or local level;

the state agency, school corporation, or qualified school or the employee of the state agency, school corporation, or qualified school shall not require the student to adopt, affirm, affiliate, or take any action that would result in favoring any particular



position on the issue or issues involved without offering an alternative option for the student to complete the assignment or receive extra credit or other incentivization that allows for the favoring of an alternative position.

SECTION 5. IC 35-49-3-3, AS AMENDED BY P.L.158-2013, SECTION 648, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2024]: Sec. 3. (a) Except as provided in subsection (b) **and section 4 of this chapter**, a person who knowingly or intentionally:

- (1) disseminates matter to minors that is harmful to minors (**as described in IC 35-49-2**);
- (2) displays matter that is harmful to minors in an area to which minors have visual, auditory, or physical access, unless each minor is accompanied by the minor's parent or guardian;
- (3) sells, rents, or displays for sale or rent to any person matter that is harmful to minors within five hundred (500) feet of the nearest property line of a school or church;
- (4) engages in or conducts a performance before minors that is harmful to minors;
- (5) engages in or conducts a performance that is harmful to minors in an area to which minors have visual, auditory, or physical access, unless each minor is accompanied by the minor's parent or guardian;
- (6) misrepresents the minor's age for the purpose of obtaining admission to an area from which minors are restricted because of the display of matter or a performance that is harmful to minors; or
- (7) misrepresents that the person is a parent or guardian of a minor for the purpose of obtaining admission of the minor to an area where minors are being restricted because of display of matter or performance that is harmful to minors;

commits a Level 6 felony.

(b) This section does not apply if a person disseminates, displays, or makes available the matter described in subsection (a) through the Internet, computer electronic transfer, or a computer network unless:

- (1) the matter is obscene under IC 35-49-2-1;
- (2) the matter is child pornography under IC 35-42-4-4; or
- (3) the person distributes the matter to a child less than eighteen (18) years of age believing or intending that the recipient is a child less than eighteen (18) years of age.

SECTION 6. IC 35-49-3-4, AS AMENDED BY P.L.266-2019, SECTION 16, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE



JANUARY 1, 2024]: Sec. 4. (a) It is a defense to a prosecution under section 3 of this chapter for the defendant to show:

- (1) that the matter was disseminated or that the performance was performed for legitimate scientific ~~or educational~~ purposes;
- (2) that the matter was disseminated or displayed to or that the performance was performed before the recipient by a bona fide ~~school~~, **college, university**, museum, **college library**, or public library that qualifies for certain property tax exemptions under IC 6-1.1-10, **or university library**, or by an employee of such a school, **college, university**, museum, **college library**, or public library, **or university library** acting within the scope of the employee's employment;
- (3) that the defendant had reasonable cause to believe that the minor involved was eighteen (18) years of age or older and that the minor exhibited to the defendant a draft card, driver's license, birth certificate, or other official or apparently official document purporting to establish that the minor was eighteen (18) years of age or older; or
- (4) that the defendant was a salesclerk, motion picture projectionist, usher, or ticket taker, acting within the scope of the defendant's employment and that the defendant had no financial interest in the place where the defendant was so employed.

(b) Except as provided in subsection (c), it is a defense to a prosecution under section 3 of this chapter if all the following apply:

- (1) A cellular telephone, another wireless or cellular communications device, or a social networking web site was used to disseminate matter to a minor that is harmful to minors.
- (2) The defendant is not more than four (4) years older or younger than the person who received the matter that is harmful to minors.
- (3) The relationship between the defendant and the person who received the matter that is harmful to minors was a dating relationship or an ongoing personal relationship. For purposes of this subdivision, the term "ongoing personal relationship" does not include a family relationship.
- (4) The crime was committed by a person less than twenty-two (22) years of age.
- (5) The person receiving the matter expressly or implicitly acquiesced in the defendant's conduct.

(c) The defense to a prosecution described in subsection (b) does not apply if:

- (1) the image is disseminated to a person other than the person:
 - (A) who sent the image; or



- (B) who is depicted in the image; or
- (2) the dissemination of the image violates:
- (A) a protective order to prevent domestic or family violence or harassment issued under IC 34-26-5 (or, if the order involved a family or household member, under IC 34-26-2 or IC 34-4-5.1-5 before their repeal);
 - (B) an ex parte protective order issued under IC 34-26-5 (or, if the order involved a family or household member, an emergency order issued under IC 34-26-2 or IC 34-4-5.1 before their repeal);
 - (C) a workplace violence restraining order issued under IC 34-26-6;
 - (D) a no contact order in a dispositional decree issued under IC 31-34-20-1, IC 31-37-19-1, or IC 31-37-5-6 (or IC 31-6-4-15.4 or IC 31-6-4-15.9 before their repeal) or an order issued under IC 31-32-13 (or IC 31-6-7-14 before its repeal) that orders the person to refrain from direct or indirect contact with a child in need of services or a delinquent child;
 - (E) a no contact order issued as a condition of pretrial release, including release on bail or personal recognizance, or pretrial diversion, and including a no contact order issued under IC 35-33-8-3.6;
 - (F) a no contact order issued as a condition of probation;
 - (G) a protective order to prevent domestic or family violence issued under IC 31-15-5 (or IC 31-16-5 or IC 31-1-11.5-8.2 before their repeal);
 - (H) a protective order to prevent domestic or family violence issued under IC 31-14-16-1 in a paternity action;
 - (I) a no contact order issued under IC 31-34-25 in a child in need of services proceeding or under IC 31-37-25 in a juvenile delinquency proceeding;
 - (J) an order issued in another state that is substantially similar to an order described in clauses (A) through (I);
 - (K) an order that is substantially similar to an order described in clauses (A) through (I) and is issued by an Indian:
 - (i) tribe;
 - (ii) band;
 - (iii) pueblo;
 - (iv) nation; or
 - (v) organized group or community, including an Alaska Native village or regional or village corporation as defined in or established under the Alaska Native Claims Settlement



Act (43 U.S.C. 1601 et seq.);
that is recognized as eligible for the special programs and
services provided by the United States to Indians because of
their special status as Indians;
(L) an order issued under IC 35-33-8-3.2; or
(M) an order issued under IC 35-38-1-30.



Speaker of the House of Representatives

President of the Senate

President Pro Tempore

Governor of the State of Indiana

Date: _____ Time: _____

HEA 1447 — CC 1

