



# TEXAS HOUSE *of* REPRESENTATIVES

*Briscoe Cain*  
District 128

CHAIR, HOUSE COMMITTEE ON ELECTIONS  
MEMBER, HOUSE COMMITTEE ON BUSINESS & INDUSTRY

May 5, 2022

The Honorable Ken Paxton  
Office of the Attorney General  
Attn: Opinion Committee  
P.O. Box 12548  
Austin, Texas 78711-2548

**RQ-0460-KP**  
**FILE# ML-49114-22**  
**I.D.# 49114**

***Expedited Opinion Request - Re: the withholding, by a school district, of medical or health information about a minor child from the child's parent, guardian, or other person standing in parental relation.***

Dear General Paxton:

I write to seek an expedited opinion from your office related to the withholding of medical information about a minor student from the student's parent or legal guardian by a school district.

Specifically, this request seeks your office's opinion as to: i) whether a school district, including an officer or employee of a school district, may, pursuant to Title IX, withhold medical or health information, including the provision of and/or availability of medical or health care related services, related to a minor child from the child's parent, guardian, or person standing in loco parentis that is required to be disclosed by state law; and ii) what effect, if any, do the laws enacted in response to Senate Bill 11 enacted by the 86th Texas Legislature, or any other applicable state law, have on the question first presented.

### **Background**

Concerns have been raised that school districts, including their officers and employees, are unlawfully withholding medical or health information about a minor child that state law requires to be disclosed to the child's parent, guardian, or person standing in loco parentis. Moreover, questions have been raised to my office by concerned parents,<sup>1</sup> teachers, and taxpayers that some school districts, school officials, and school staff may be relying on articles published by a teachers union and the taxpayer-funded lobbying organization Texas Association of School Board which are purported to be some of what some school districts are relying on to withhold health

<sup>1</sup> An example of a matter presented to me by a concerned parent is attached hereto as Exhibit A.



information from the parent, guardian, or person standing in loco parentis of a minor child for which state law requires to be disclosed.<sup>2</sup>

The Texas Legislature has, over the last several years, enacted legislation requiring schools to inform, notify, or disclose certain health and/or medical information, including the provision of and/or availability of certain counseling or psychological services, to the child's parent, guardian, or person in parental relation.<sup>3</sup>

### **Relevant Law Related to the Second Question**

Senate Bill 11 (SB 11) was an omnibus bill captioned “relating to policies, procedures, and measures for school safety and mental health promotion in public schools and the creation of the Texas Child Mental Health Care Consortium” enacted by the Texas Legislature in 2019.<sup>4</sup>

SB 11 contained a provision, which according to the enrolled bill analysis: “[p]rohibits a team from providing a mental health care service to a student who is under 18 years of age unless the team obtains written consent from the parent of or person standing in parental relation to the student before providing the mental health care service.”<sup>5</sup>

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<sup>2</sup> See e.g., Texas Classroom Teachers Association (April 23, 2022), <https://www.tcta.org/legal-updates/title-ix-ensures-protections-for-transgender-students>; Texas Assoc. of School Boards (Oct. 2021), [https://www.tasb.org/services/legal-services/tasb-school-law-source/students/documents/legal\\_issues\\_related\\_to\\_transgender\\_students.pdf](https://www.tasb.org/services/legal-services/tasb-school-law-source/students/documents/legal_issues_related_to_transgender_students.pdf)

<sup>3</sup> See e.g., Tex. H.B. 18, 86th Leg., R.S. (2019) (which added to the information that must be shared with parents about available counseling in and out of school. And requires parental consent before a school-based health center refers a student for physical or mental health care).

<sup>4</sup> Tex. S.B. 11, 86th Leg., R.S. (2019).

<sup>5</sup> House Comm. on Public Education, Enrolled Bill Analysis, Tex. S.B. 11, 86th Leg., R.S. (2019) (analyzing Tex. Ed. Code §37.115(g)), <https://capitol.texas.gov/tlodocs/86R/analysis/pdf/SB00011F.pdf>.

The full text of the relevant provision of the bill analysis is as follows:

(g) Prohibits a team from providing a mental health care service to a student who is under 18 years of age unless the team obtains written consent from the parent of or person standing in parental relation to the student before providing the mental health care service. Requires the consent required by this subsection to be submitted on a form developed by the school district that complies with all applicable state and federal law. Authorizes the student's parent or person standing in parental



Said provision became subsection (g) of section 37.115 of the Texas Education Code, which provides:

A team may not provide a mental health care service to a student who is under 18 years of age unless the team obtains written consent from the parent of or person standing in parental relation to the student before providing the mental health care service. The consent required by this subsection must be submitted on a form developed by the school district that complies with all applicable state and federal law. The student's parent or person standing in parental relation to the student may give consent for a student to receive ongoing services or may limit consent to one or more services provided on a single occasion.

Tex. Ed. Code § 37.115(g).

In order to assist your office with answering the questions presented herein, the following is a brief background of section 37.115(g) of the Texas Education Code. Subsection (g) was added to SB 11 by Floor Amendment 1 authored by Rep. Greg Bonnen, the bill's House Sponsor, on May 21, 2019 when SB 11 was before the House on Second Reading. See H.J. of Tex., 86th Leg., R.S. 4288-90 (May 21, 2019).<sup>6</sup>

Prior to the amendment's unanimous adoption by the House, a discussion of the amendment's intent took place between Representatives Steve Toth and Greg Bonnen. According to the journal, the exchange was as follows:

AMENDMENT NO. 1 - STATEMENT OF LEGISLATIVE INTENT

REPRESENTATIVE TOTH: Dr. Bonnen, as I understand the amendment—there's been a lot of dialogue about this bill. Does your bill allow the school to go in and do a health diagnostic on a child?

REPRESENTATIVE G. BONNEN: No, it does not.

TOTH: Why not?

relation to the student to give consent for a student to receive ongoing services or to limit consent to one or more services provided on a single occasion.

<sup>6</sup> link to page 4289 of the H. Jour. is here:

<https://journals.house.texas.gov/hjml/86r/pdf/86RDAY70FINAL.PDF#page=53>





G. BONNEN: Only a mental health professional may do a mental health assessment and diagnosis and then recommend subsequent treatment. The purpose of the threat assessment team is precisely to assess the level of threat so that should a student or an individual be exhibiting behavior that is worrisome or concerning—that this person may be contemplating harm to themselves such as suicide or a violent act toward other students or teachers—that they can engage with that person to simply learn is this student having a bad day, are they making a bad joke, or is there something that is more serious and underlining that would necessarily require attention.

TOTH: Can they do a diagnostic on the child without a parent's permission?

G. BONNEN: No. It's actually stated in the statute should the threat assessment team find an immediate danger or concern, they are to report it to the superintendent, and the superintendent is actually tasked with immediately attempting to notify the parent.

TOTH: So the superintendent has to notify the parent and ask the parents' permission. Do I understand that correctly?

G. BONNEN: No mental health services will be delivered without parental notification or consent. Now, if they evaluate the student—

TOTH: Can they put the kids on drugs?

G. BONNEN: There is no provision in here whatsoever for any student to be medicated. Period. The one thing I will say is if a student is suicidal or homicidal, then there are protocols developed by the School Safety Center to deal with an immediate, acute threat. So if a student is threatening to kill themselves and it's a legitimate, compelling threat, they don't have to call the parent to prevent the child from harming themselves or hurting someone else.

*Id.* at 4289-90.

### **Conclusion**

As you are well aware, parental rights are under attack across the country. And sadly, the ideology that the government, not parents, knows what's best for children, has infiltrated our schools in Texas.

The Texas Legislature has enacted laws requiring parents and guardians to be informed and notified of certain medical and health information about their minor child, yet some school districts, school officials, and school staff are doing everything they can to flout the law.



TEXAS HOUSE *of*  
REPRESENTATIVES

*Briscoe Cain*  
*District 128*

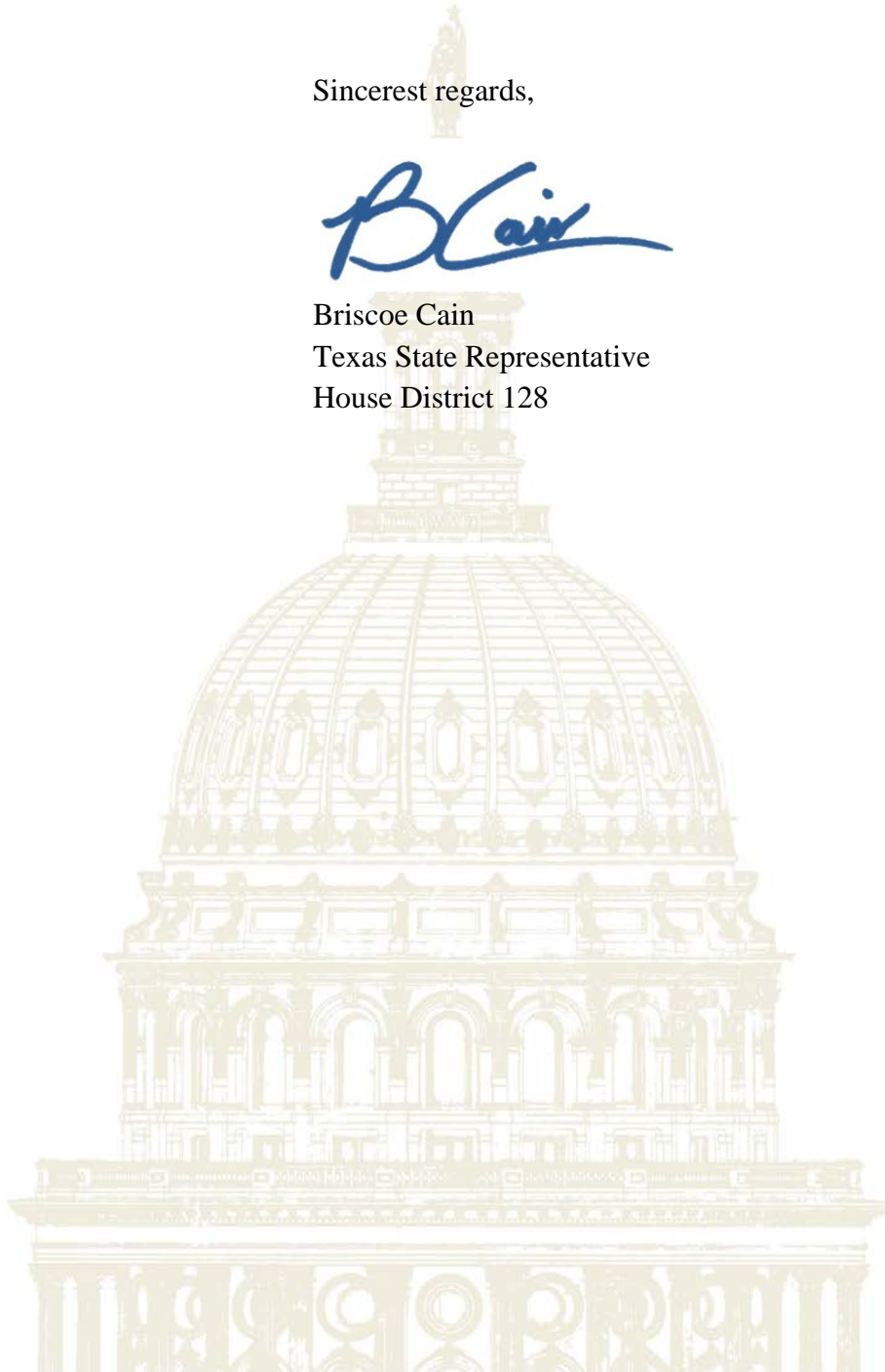
CHAIR, HOUSE COMMITTEE ON ELECTIONS  
MEMBER, HOUSE COMMITTEE ON BUSINESS & INDUSTRY

Thank you for expediting this request.

Sincerest regards,



Briscoe Cain  
Texas State Representative  
House District 128





## EXHIBIT A

### Working with Student Confidentiality

What does support look like?

Acceptance, respect, trust, and honesty---KINDNESS

A student may be called by a name other than a legal name (Nickname).

Verbally, a student is allowed to be addressed by a preferred name.

However, on school and/or legal documents, only the legal name is allowed.

A student may be called by a preferred pronoun.

A student has the right to confidentiality.

When communicating with a parent, always use the student's legal name, unless otherwise asked by the student.

Restrooms:

Student may use the clinic, if he or she selects to.