

Parents' Rights Under the Law

- § 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 deemed this right to be fundamental; any intrusion upon this right requires that the state establish an overriding necessity@ (Alfonso v. Fernandez, 195 A.D.2d 46 (2nd Dept., 1993))
- § New York State's Education Law ' 3204(5) recognizes the interests of parents in protecting their children. Under that statute, students may opt out of health and hygiene classes if they conflict with the religion of their parents or guardians.
- § The New York State Code of Rules and Regulations ("NYCRR") that govern health education also contain provisions that protect parents and children:
 - § NYCRR ' 135.3 provides that in elementary schools, health education "shall be taught by the regular classroom teachers". In high schools, health education "shall be taught by teachers holding a certificate to teach health", and AIDS education "shall be given during an existing class period using existing instructional personnel, and the board of education or trustees shall provide... instructional materials to the parents who request such materials".
 - § Under NYCRR ' 135.3, a school district's 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"
- § 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).