

49-2-124. Universal mental health or socioemotional screening. —

(a) As used in this section:

(1) “Mental health screening” or “socioemotional screening” means, for the purposes of this chapter, the use of one (1) or more brief, structured questionnaires designed to identify the possibility that an individual has a mental health problem;

(2) “Psychotropic medication” means a drug that exercises a direct effect upon the central nervous system and that is capable of influencing and modifying behavior. Psychotropic medication includes, but is not limited to:

(A) Antipsychotics;

(B) Antidepressants;

(C) Agents for control of mania and depression;

(D) Antianxiety agents;

(E) Psychomotor stimulants; and

(F) Hypnotics; and

(3) “Universal mental health or socioemotional screening” means, for the purposes of this chapter, any mental health screening program in which a group of individuals is automatically screened without regard to whether there was a prior indication of a mental health problem.

(b) Universal mental health or socioemotional screening is only permitted under the following circumstances:

(1) A parent, guardian, legal custodian or caregiver under the Power of Attorney for Care of a Minor Child Act, compiled in title [34](#), chapter 6, part 3, of a child under sixteen (16) years of age has provided written, active, informed and voluntarily signed consent that may be withdrawn at any time by the parent, guardian, legal custodian or caregiver under the Power of Attorney for Care of a Minor Child Act;

(2) A court requires the mental health evaluation, examination or testing;

(3) Emergency screening, evaluation, examination or testing of an individual under the Power of Attorney for Care of a Minor Child Act or screening done in connection with a disaster or epidemic; or

(4) Screening required pursuant to the early periodic screening, diagnosis, and treatment (EPSDT) program with active, written, informed, voluntarily signed consent as outlined in subdivision (b)(1) that may be withdrawn at any time by the parent, legal guardian, custodian or caregiver under the Power of Attorney for Care of a Minor Child Act who gave the consent.

(c) Notwithstanding any law to the contrary, a local education agency (LEA) may not use the parent's refusal to consent to administration of a psychotropic medication to a student or to a mental health screening, evaluation, testing or examination of a child or student as grounds for prohibiting the child from attending class or participating in a school-related activity or as the basis of reporting or charging child abuse, child neglect, educational neglect or medical neglect. An LEA shall not use nor threaten use of school sanctions to a student to coerce parental consent to a mental health screening, evaluation, testing or examination. A person employed by an LEA may not require that a student be evaluated or treated with any psychotropic medication or for a particular mental health diagnosis. Only the following

LEA personnel may perform an evaluation for psychiatric diagnosis or treatment, or both, with written, informed, voluntarily signed consent as outlined in subdivision (b)(1) that may be withdrawn at any time by the parent, legal guardian, custodian or caregiver under the Power of Attorney for Care of a Minor Child Act who gave the consent:

- (1) A psychiatrist;
- (2) A physician with expertise in psychiatry as determined by training, education or experience;
- (3) An advanced practice nurse with special certification in mental health or psychiatric nursing;
- (4) An advanced practice nurse with expertise in mental health or psychiatric nursing as determined by training, education or experience;
- (5) A psychologist with health service provider designation;
- (6) A senior psychological examiner;
- (7) A licensed professional counselor;
- (8) A licensed clinical social worker; or
- (9) A school psychologist.

(d) Written, informed, active, voluntary consent as outlined in subdivision (b)(1) that may be withdrawn at any time by the parent, legal guardian, custodian or caregiver under the Power of Attorney for Care of a Minor Child Act must also be obtained before proceeding with any psychiatric treatment recommendations resulting from any mental health screening, evaluation, testing or examination.

(e) Subsections (b) and (c) shall not be construed to:

(1) Prevent an appropriate referral under the child find system required under 20 U.S.C. § 1412, with appropriate parental consent procedures as required under 20 U.S.C. § 1414(a)(1)(D)(i);

(2) Prohibit an LEA employee from discussing any aspect of a child's behavior or academic progress with the child's parent or guardian or another appropriate school district employee, consistent with federal and state law, including the requirement of prior parental consent for the disclosure of any education records. Nothing in this subdivision (e)(2) shall be construed to modify or affect parental notification requirements for programs authorized under the Elementary and Secondary Education Act of 1965, as amended by the No Child Left Behind Act of 2001, Public Law 107-110;

(3) Prohibit an LEA employee from referring a child to LEA personnel specified in subsection (c);

(4) Prohibit referrals, counseling or support in the event of an emergency or urgent situation to include, but not be limited to, the death, suicide, attempted suicide, murder, attempted murder, serious injury or serious illness of a student, teacher, staff, member of the administration, superintendent or any other school personnel or significant individual; or

(5) Prohibit testing that is a part of a course of treatment, rehabilitation or service plan for children in the legal custody of a state agency or required by federal law applicable to such children, or as otherwise authorized under title [37](#), including, but not limited to, child protective services assessments or evaluations.

(f) Each LEA shall inform each parent, legal guardian, custodian or caregiver of their rights pursuant to this section and shall provide a copy of the LEA policy on the rights of parents and students as required in

§ [49-2-211](#) and a copy of the Protection of Pupil Rights, codified in 20 U.S.C. § 1232h, commonly referred to as the Tiahrt Amendment, as amended by the Parents Rights Restoration Amendment to Goals 2000, March 31, 1994, Public Law 103-227, § 1017, and included in the No Child Left Behind Law, compiled in 20 U.S.C. § 6301, et seq.

(g) The local board of education of each LEA shall adopt policies that may be reasonable and necessary to ensure implementation and enforcement of this section. The local board of education of each LEA shall report to the department of education by July 1, 2010, on the impact of this section.

[Acts 2009, ch. 127, § 1.]