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LEGAL UPDATE

October 19, 2015

To: Superintendents, Member School Districts (K-12)
From: Jennifer E. Nix *JEN*
Schools Legal Counsel
Subject: **Healthy Youth Act – Pupil Sexual Health Education**
Memo No. 27-2015

On October 1, 2015, Governor Brown signed Assembly Bill 329 into law, which requires school districts to provide sexual health education to students in grades 7 through 12. AB 329 amends Education Code sections 51930 through 51939¹ and renames the chapter the “Healthy Youth Act.” AB 329 will be effective on January 1, 2016.

Comprehensive Sexual Health Education and HIV-Prevention Education

As of January 1, 2016, school districts serving students in grades 7 through 12 will be required to ensure that all students in those grades receive comprehensive sexual health education and HIV-prevention education from instructors trained in the appropriate courses.² Every student must receive this instruction at least once in junior high or middle school, and at least once in high school.³ This instruction must include the following:

1. Information on the nature of HIV, as well as other sexually transmitted infections, and their effects on the human body.
2. Information on the manner in which HIV and other sexually transmitted infections are and are not transmitted.
3. Information that abstinence from sexual activity and injection drug use is the only certain way to prevent HIV and other sexually transmitted infections and abstinence from sexual intercourse is the only certain way to prevent unintended pregnancy.

¹ Education Code sections 51930 through 51939 as amended are attached to this Legal Update.

² Education Code section 51934. School districts are permitted to contract with outside consultants or guest speakers to deliver the comprehensive sexual health education and HIV-prevention education. Education Code section 51936.

³ Education Code section 51934.



4. Information about the effectiveness and safety of all FDA-approved methods that prevent or reduce the risk of contracting HIV and other sexually transmitted infections.
5. Information about the effectiveness and safety of reducing the risk of HIV transmission as a result of injection drug use by decreasing needle use and needle sharing.
6. Information about the treatment of HIV and other sexually transmitted infections.
7. Discussion about social views on HIV and AIDS.
8. Information about local resources, how to access local resources, and pupils' legal rights to access local resources for sexual and reproductive health care and assistance with sexual assault and intimate partner violence.
9. Information about the effectiveness and safety of all FDA-approved contraceptive methods in preventing pregnancy, including, but not limited to, emergency contraception.
10. Information about sexual harassment, sexual assault, adolescent relationship abuse, intimate partner violence, and sex trafficking.⁴

Staff Training

AB 329 also requires school districts to periodically plan and conduct in-service training for all school district personnel who provide HIV-prevention education.⁵

Parental Review of Materials, Excusal of Students, and Notice to Parents

A student's parent or guardian has the right to excuse his/her student from all or part of sexual education, HIV-prevention education, and assessments related to that education through a passive consent process ("opt-out").⁶ A school district cannot require active parental consent ("opt-in") for comprehensive sexual health education and HIV-prevention education.⁷

At the beginning of the school year, or at the time of enrollment for a student enrolling after the start of the school year, each school district must notify parents and guardians about the comprehensive sexual health education and HIV-prevention education and research on health behaviors and risks.⁸ The notice must advise the parents and guardians of the following:

1. That a parent or guardian is able to inspect the materials used in the instruction.
2. Whether school district personnel or outside consultants will be providing the instruction.
3. That a parent or guardian can request a copy of the Healthy Youth Act from the school district.
4. That a parent or guardian has the right to opt-out of the instruction with a written request.⁹

⁴ Education Code section 51934. Section 51934 contains detailed explanations of the required instruction. The comprehensive sexual health education and HIV-prevention education must also satisfy the criteria detailed in Education Code section 51933.

⁵ Education Code section 51935. School districts are permitted to contract with outside consultants or guest speakers to deliver this periodic in-service training. Education Code section 51936.

⁶ Education Code section 51938(a). An alternate educational activity must be made available to students for whom their parents or guardians have requested they not receive the instruction. Education Code section 51939.

⁷ Education Code section 51938(a). For example, a school cannot require parents and guardians to submit a permission slip prior to the comprehensive sexual health education and HIV-prevention education.

⁸ *Id.*

⁹ *Id.*



Questionnaires and Surveys

School districts are permitted to give anonymous, voluntary, and confidential research and evaluation tools to students in grades 7 through 12 to measure students' health behaviors and risks.¹⁰ Prior to administration of such a test, questionnaire, or survey, school districts must notify parents and guardians that the test, questionnaire, or survey is being given; that parents or guardians have the right to review the test, questionnaire, or survey; and that parents or guardians have the right to excuse their students from the test, questionnaire, or survey with a written request.¹¹

Please contact our office with questions regarding this Legal Update or any other legal matter.

The information in this Legal Update is provided as a summary of law and is not intended as legal advice. Application of the law may vary depending on the particular facts and circumstances at issue. We, therefore, recommend that you consult legal counsel to advise you on how the law applies to your specific situation.

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¹⁰ Education Code section 51938(c).

¹¹ *Id.* An alternate educational activity must be made available to students for whom their parents or guardians have requested they not participate in the test, questionnaire, or survey. Education Code section 51939.

CHAPTER 5.6. California Healthy Youth Act

ARTICLE 1

§ 51930.

(a) This chapter shall be known, and may be cited, as the California Healthy Youth Act.

(b) The purposes of this chapter are as follows:

(1) To provide pupils with the knowledge and skills necessary to protect their sexual and reproductive health from HIV and other sexually transmitted infections and from unintended pregnancy.

(2) To provide pupils with the knowledge and skills they need to develop healthy attitudes concerning adolescent growth and development, body image, gender, sexual orientation, relationships, marriage, and family.

(3) To promote understanding of sexuality as a normal part of human development.

(4) To ensure pupils receive integrated, comprehensive, accurate, and unbiased sexual health and HIV prevention instruction and provide educators with clear tools and guidance to accomplish that end.

(5) To provide pupils with the knowledge and skills necessary to have healthy, positive, and safe relationships and behaviors.

§ 51931.

For the purposes of this chapter, the following definitions apply:

(a) “Age appropriate” refers to topics, messages, and teaching methods suitable to particular ages or age groups of children and adolescents, based on developing cognitive, emotional, and behavioral capacity typical for the age or age group.

(b) “Comprehensive sexual health education” means education regarding human development and sexuality, including education on pregnancy, contraception, and sexually transmitted infections.

(c) “English learner” means a pupil as described in subdivision (a) of Section 306.

(d) “HIV prevention education” means instruction on the nature of human immunodeficiency virus (HIV) and AIDS, methods of transmission, strategies to reduce the risk of HIV infection, and social and public health issues related to HIV and AIDS.

(e) “Instructors trained in the appropriate courses” means instructors with knowledge of the most recent medically accurate research on human sexuality, healthy relationships, pregnancy, and HIV and other sexually transmitted infections.

(f) “Medically accurate” means verified or supported by research conducted in compliance with scientific methods and published in peer-reviewed journals, where appropriate, and recognized as accurate and objective by professional organizations and agencies with expertise in the relevant field, such as the federal Centers for Disease Control and Prevention, the American Public Health Association, the American Academy of Pediatrics, and the American College of Obstetricians and Gynecologists.

(g) “School district” includes county boards of education, county superintendents of schools, the California School for the Deaf, and the California School for the Blind.

§ 51932.

(a) This chapter does not apply to description or illustration of human reproductive organs that may appear in a textbook, adopted pursuant to law, if the textbook does not include other elements of comprehensive sexual health education or HIV prevention education as defined in Section 51931.

(b) This chapter does not apply to instruction, materials, presentations, or programming that discuss gender, gender identity, gender expression, sexual orientation, discrimination, harassment, bullying, intimidation, relationships, or family and do not discuss human reproductive organs and their functions.

ARTICLE 2. REQUIRED COMPREHENSIVE SEXUAL HEALTH EDUCATION AND HIV PREVENTION EDUCATION

§ 51933.

All comprehensive sexual health education and HIV prevention education pursuant to Section 51934, whether taught or supplemented by school district personnel or by outside consultants or guest speakers pursuant to Section 51936, shall satisfy all of the following criteria:

(a) Instruction and materials shall be age appropriate.

(b) All factual information presented shall be medically accurate and objective.

(c) All instruction and materials shall align with and support the purposes of this chapter as set forth in paragraphs (1) to (5), inclusive, of subdivision (b) of Section 51930 and may not be in conflict with them.

(d)(1) Instruction and materials shall be appropriate for use with pupils of all races, genders, sexual orientations, and ethnic and cultural backgrounds, pupils with disabilities, and English learners.

(2) Instruction and materials shall be made available on an equal basis to a pupil who is an English learner, consistent with the existing curriculum and alternative options for an English learner pupil as otherwise provided in this code.

(3) Instruction and materials shall be accessible to pupils with disabilities, including, but not limited to, the provision of a modified curriculum, materials and instruction in alternative formats, and auxiliary aids.

(4) Instruction and materials shall not reflect or promote bias against any person on the basis of any category protected by Section 220.

(5) Instruction and materials shall affirmatively recognize that people have different sexual orientations and, when discussing or providing examples of relationships and couples, shall be inclusive of same-sex relationships.

(6) Instruction and materials shall teach pupils about gender, gender expression, gender identity, and explore the harm of negative gender stereotypes.

(e) Instruction and materials shall encourage a pupil to communicate with his or her parents, guardians, and other trusted adults about human sexuality and provide the knowledge and skills necessary to do so.

(f) Instruction and materials shall teach the value of and prepare pupils to have and maintain committed relationships such as marriage.

(g) Instruction and materials shall provide pupils with knowledge and skills they need to form healthy relationships that are based on mutual respect and affection, and are free from violence, coercion, and intimidation.

(h) Instruction and materials shall provide pupils with knowledge and skills for making and implementing healthy decisions about sexuality, including negotiation and refusal skills to assist pupils in overcoming peer pressure and using effective decisionmaking skills to avoid high-risk activities.

(i) Instruction and materials may not teach or promote religious doctrine.

§ 51934.

(a) Each school district shall ensure that all pupils in grades 7 to 12, inclusive, receive comprehensive sexual health education and HIV prevention education from instructors trained in the appropriate courses. Each pupil shall receive this instruction at least once in junior high or middle school and at least once in high school. This instruction shall include all of the following:

(1) Information on the nature of HIV, as well as other sexually transmitted infections, and their effects on the human body.

(2) Information on the manner in which HIV and other sexually transmitted infections are and are not transmitted, including information on the relative risk of infection according to specific behaviors, including sexual activities and injection drug use.

(3) Information that abstinence from sexual activity and injection drug use is the only certain way to prevent HIV and other sexually transmitted infections and abstinence from sexual intercourse is the only certain way to prevent unintended pregnancy. Instruction shall provide information about the value of delaying sexual activity while also providing medically accurate information on other methods of preventing HIV and other sexually transmitted infections and pregnancy.

(4) Information about the effectiveness and safety of all federal Food and Drug Administration (FDA) approved methods that prevent or reduce the risk of contracting HIV and other sexually transmitted infections, including use of antiretroviral medication, consistent with the federal Centers for Disease Control and Prevention.

(5) Information about the effectiveness and safety of reducing the risk of HIV transmission as a result of injection drug use by decreasing needle use and needle sharing.

(6) Information about the treatment of HIV and other sexually transmitted infections, including how antiretroviral therapy can dramatically prolong the lives of many people living with HIV and reduce the likelihood of transmitting HIV to others.

(7) Discussion about social views on HIV and AIDS, including addressing unfounded stereotypes and myths regarding HIV and AIDS and people living with HIV. This instruction shall emphasize that successfully treated HIV-positive individuals have a normal life expectancy, all people are at some risk of contracting HIV, and the only way to know if one is HIV-positive is to get tested.

(8) Information about local resources, how to access local resources, and pupils' legal rights to access local resources for sexual and reproductive health care such as testing and medical care for HIV and other sexually transmitted infections and pregnancy prevention and care, as well as local resources for assistance with sexual assault and intimate partner violence.

(9) Information about the effectiveness and safety of all FDA-approved contraceptive methods in preventing pregnancy, including, but not limited to, emergency contraception. Instruction on pregnancy shall include an objective discussion of all legally available pregnancy outcomes, including, but not limited to, all of the following:

(A) Parenting, adoption, and abortion.

(B) Information on the law on surrendering physical custody of a minor child 72 hours of age or younger, pursuant to Section 1255.7 of the Health and Safety Code and Section 271.5 of the Penal Code.

(C) The importance of prenatal care.

(10) Information about sexual harassment, sexual assault, adolescent relationship abuse, intimate partner violence, and sex trafficking.

(b) A school district may provide comprehensive sexual health education or HIV prevention education consisting of age-appropriate instruction earlier than grade 7 using instructors trained in the appropriate courses. A school district that elects to offer comprehensive sexual health education or HIV prevention education earlier than grade 7 may provide age appropriate and medically accurate information on any of the general topics contained in paragraphs (1) to (10), inclusive, of subdivision (a).

ARTICLE 3. IN-SERVICE TRAINING

§ 51935.

(a) A school district shall cooperatively plan and conduct in-service training for all school district personnel that provide HIV prevention education, through regional planning, joint powers agreements, or contract services.

(b) In developing and providing in-service training, a school district shall cooperate and collaborate with the teachers of the district who provide HIV prevention education and with the department.

(c) In-service training shall be conducted periodically to enable school district personnel to learn new developments in the scientific understanding of HIV. In-service training shall be voluntary for school district personnel who have demonstrated expertise or received in-service training from the department or federal Centers for Disease Control and Prevention.

(d) A school district may expand HIV in-service training to cover the topic of comprehensive sexual health education in order for school district personnel who provide comprehensive sexual health education to learn new developments in the scientific understanding of sexual health.

§ 51936.

School districts may contract with outside consultants or guest speakers, including those who have developed multilingual curricula or curricula accessible to persons with disabilities, to deliver comprehensive sexual health education and HIV prevention education or to provide training for school district personnel. All outside consultants and guest speakers shall have expertise in comprehensive sexual health education and HIV prevention education and have knowledge of the most recent medically accurate research on the relevant topic or topics covered in their instruction.

ARTICLE 4. NOTICE AND PARENTAL EXCUSE

§ 51937.

It is the intent of the Legislature to encourage pupils to communicate with their parents or guardians about human sexuality and HIV and to respect the rights of parents or guardians to supervise their children's education on these subjects. The Legislature intends to create a streamlined process to make it easier for parents and guardians to review materials and evaluation tools related to comprehensive sexual health education and HIV prevention education, and, if they wish, to excuse their children from participation in all or part of that instruction or evaluation. The Legislature recognizes that while parents and guardians overwhelmingly support medically accurate, comprehensive sex education, parents and guardians have the ultimate responsibility for imparting values regarding human sexuality to their children.

§ 51938.¹

(a) A parent or guardian of a pupil has the right to excuse their child from all or part of comprehensive sexual health education, HIV prevention education, and assessments related to that education through a passive consent ("opt-out") process. A school district shall not require active parental consent ("opt-in") for comprehensive sexual health education and HIV prevention education.

(b) At the beginning of each school year, or, for a pupil who enrolls in a school after the beginning of the school year, at the time of that pupil's enrollment, each school district shall notify the parent or guardian of each pupil about instruction in comprehensive sexual health education and HIV prevention education and research on pupil health behaviors and risks planned for the coming year. The notice shall do all of the following:

(1) Advise the parent or guardian that written and audiovisual educational materials used in comprehensive sexual health education and HIV prevention education are available for inspection.

(2) Advise the parent or guardian whether the comprehensive sexual health education or HIV prevention education will be taught by school district personnel or by outside consultants. A school district may provide comprehensive sexual health education or HIV prevention education, to be taught by outside consultants, and may hold an assembly to deliver comprehensive sexual health education or HIV prevention education by guest speakers, but if it elects to provide comprehensive sexual health education or HIV prevention education in either of these manners, the notice shall include the date of the instruction, the name of the organization or affiliation of each guest speaker, and information stating the right of the parent or guardian to request a copy of this section, Section 51933, and Section 51934. If arrangements for this instruction are made after the beginning of the school year, notice shall be made by

¹ If Assembly Bill 517 passes, this section will be replaced with an alternate section 51938. The two sections are substantially similar. SCLS will send out a revised Legal Update if that occurs.

mail or another commonly used method of notification, no fewer than 14 days before the instruction is delivered.

(3) Include information explaining the parent's or guardian's right to request a copy of this chapter.

(4) Advise the parent or guardian that the parent or guardian has the right to excuse their child from comprehensive sexual health education and HIV prevention education and that in order to excuse their child they must state their request in writing to the school district.

(c) Notwithstanding Section 51513, anonymous, voluntary, and confidential research and evaluation tools to measure pupils' health behaviors and risks, including tests, questionnaires, and surveys containing age-appropriate questions about the pupil's attitudes concerning or practices relating to sex, may be administered to any pupil in grades 7 to 12, inclusive. A parent or guardian has the right to excuse their child from the test, questionnaire, or survey through a passive consent ("opt-out") process. A school district shall not require active parental consent ("opt-in") for these tests, questionnaires, or surveys in grades 7 to 12, inclusive. Parents or guardians shall be notified in writing that this test, questionnaire, or survey is to be administered, given the opportunity to review the test, questionnaire, or survey if they wish, notified of their right to excuse their child from the test, questionnaire, or survey, and informed that in order to excuse their child they must state their request in writing to the school district.

(d) The use of outside consultants or guest speakers as described in paragraph (2) of subdivision (b) is within the discretion of the school district.

§ 51939.

(a) A pupil may not attend any class in comprehensive sexual health education or HIV prevention education, or participate in any anonymous, voluntary, and confidential test, questionnaire, or survey on pupil health behaviors and risks, if the school has received a written request from the pupil's parent or guardian excusing the pupil from participation.

(b) A pupil may not be subject to disciplinary action, academic penalty, or other sanction if the pupil's parent or guardian declines to permit the pupil to receive comprehensive sexual health education or HIV prevention education or to participate in anonymous, voluntary, and confidential tests, questionnaires, or surveys on pupil health behaviors and risks.

(c) While comprehensive sexual health education, HIV prevention education, or anonymous, voluntary, and confidential test, questionnaire, or survey on pupil health behaviors and risks is being administered, an alternative educational activity shall be made available to pupils whose parents or guardians have requested that they not receive the instruction or participate in the test, questionnaire, or survey.