

## QUESTIONS & ANSWERS FOR SCHOOL DISTRICTS

The California Healthy Youth Act, which took effect January 1, 2016, requires school districts to provide students with integrated, comprehensive, accurate, and inclusive comprehensive sexual health education and HIV prevention education, at least once in high school and once in middle school. The California Healthy Youth Act made other significant changes to previous Education Code requirements for both HIV prevention education and comprehensive sexual health education.

### WHAT ARE THE PURPOSES THE CALIFORNIA HEALTHY YOUTH ACT?

The California Healthy Youth Act has several purposes (EC § 51930(b)):

- To provide students with the knowledge and skills necessary to:
  - Protect their sexual and reproductive health from HIV and other sexually transmitted infections and from unintended pregnancy;
  - Develop healthy attitudes concerning adolescent growth and development, body image, gender, sexual orientation, relationships, marriage, and family;
  - Have healthy, positive, and safe relationships and behaviors;
- To promote understanding of sexuality as a normal part of human development; and
- 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.

### ARE SCHOOLS REQUIRED TO TEACH COMPREHENSIVE SEXUAL HEALTH EDUCATION AND HIV PREVENTION EDUCATION?

Yes. The California Healthy Youth Act requires that that students in grades 7-12 receive comprehensive sexual health education and HIV prevention education at least once in middle school and once in high school. The Education Code defines comprehensive sexual health education as “education regarding human development and sexuality, including education on pregnancy, contraception, and sexually transmitted infections” (EC § 51931(b)) and HIV prevention education as “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” (EC § 51931(d)). HIV prevention education has been mandated since 1992.

### DOES THE LAW PERMIT SCHOOLS TO TEACH COMPREHENSIVE SEXUAL HEALTH AND HIV PREVENTION EDUCATION IN ELEMENTARY SCHOOL?

Yes. Comprehensive sexual health and HIV prevention education may be taught in grades K-6, inclusive. All instruction and materials in grades K-6 must meet the baseline requirements listed below. Content that is

required in grades 7-12 may be also be included in an age-appropriate way in earlier grades. (EC §§ 51933, 51934(b).)

## WHAT ARE THE BASELINE REQUIREMENTS FOR ALL COMPREHENSIVE SEXUAL HEALTH EDUCATION AND HIV PREVENTION EDUCATION?

According to the Education Code (EC § 51933), all instruction and materials in all grades (including elementary) must:

- Be age-appropriate;
- Be medically accurate and objective;
- Align with and support the purposes of the California Healthy Youth Act, as described above;
- Be appropriate for use with pupils of all races, genders, sexual orientations, ethnic and cultural backgrounds;
- Be appropriate for and equally available to English language learners;
- Be appropriate for and accessible to pupils with disabilities;
- Affirmatively recognize different sexual orientations and be inclusive of same-sex relationships in discussions and examples;
- Teach about gender, gender expression, gender identity, and the harm of negative gender stereotypes;
- Encourage students to communicate with their parents/guardians and other trusted adults about human sexuality, and provide skills for doing so;
- Teach respect and skills for committed relationships such as marriage;
- Provide knowledge and skills for forming healthy relationships that are free from violence; and
- Provide knowledge and skills for making and implementing healthy decisions about sexuality.

In addition, the Education Code (EC § 51933) specifies that instruction and materials in all grades may not:

- Teach or promote religious doctrine; or
- Reflect or promote bias against any person on the basis of actual or perceived disability, gender, gender identity, gender expression, race or ethnicity, nationality, religion, or sexual orientation, or any other category protected by the non-discrimination policy codified in Education Code § 220.

## WHAT ADDITIONAL CONTENT IS REQUIRED IN GRADES 7-12?

Instruction provided in grades 7-12, in addition to meeting the baseline requirements above, must include all of the following content (EC § 51934):

- Information on the nature and transmission of HIV and other sexually transmitted infections (STIs);

- Information about all federal Food and Drug Administration (FDA)-approved methods of reducing the risk of transmission of HIV and other STIs, including antiretroviral treatment, and information about treatment of HIV and STIs;
- Information about reducing the risk of HIV transmission as a result of injection drug use by decreasing needle use and needle sharing;
- Discussion about social views of HIV and AIDS, emphasizing that all people are at some risk of contracting HIV and that the only way to know one’s HIV status is by being tested;
- Information about accessing resources for sexual and reproductive health care and assistance with sexual assault and intimate partner violence, as well as students’ legal rights to access these resources;
- Information about the effectiveness and safety of all federal FDA-approved contraceptive methods in preventing pregnancy (including emergency contraception);
- Information that abstinence is the only certain way to prevent unintended pregnancy and HIV and other STIs; information about value of delaying sexual activity must be included and must be accompanied by information about other methods for preventing pregnancy and STIs;
- Information about pregnancy, including 1) the importance of prenatal care; 2) all legally available pregnancy outcomes, including parenting, adoption, and abortion; and 3) California’s newborn safe surrender law; and
- Information about sexual harassment, sexual assault, adolescent relationship abuse, intimate partner violence, and sex trafficking.

*See EC § 51934 for the exact language of these requirements.*

Any of these content areas may also be covered in an age-appropriate way prior to grade 7.

### DOES THE LAW ALLOW ABSTINENCE-ONLY EDUCATION?

No. “Abstinence-only” sex education, which offers abstinence as the only option for preventing STIs and unintended pregnancy, is not permitted in California public schools.

Comprehensive sexual health education in grades 7-12 must include medically accurate, up-to-date information about the effectiveness and safety of all federal FDA-approved methods for preventing HIV, other STIs, and pregnancy. (EC § 51934(a)(9).)

In addition, abstinence may not be discussed in isolation from other methods of preventing HIV, other STIs, and pregnancy. The Education Code requires that instruction and materials include information that abstinence is the only certain way to prevent HIV, other STIs, and unintended pregnancy. However, it also states: “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.” (EC § 51934(a)(3).)

## WHY IS THERE A REQUIREMENT FOR INTEGRATED INSTRUCTION, AND WHAT DOES IT MEAN?

In order to ensure that students receive instruction that best supports their need for accurate, comprehensive information, the requirement for integrated instruction means that there must be internal consistency within sexual health education and HIV prevention instruction and materials. All instruction and materials must support and align with the purposes of the California Healthy Youth Act and with each other; they may not be in conflict with or undermine each other or any of the purposes of the law. For example, schools may not use materials that, in promoting abstinence, focus exclusively on the failure rates or perceived disadvantages of condoms or contraception, even if schools attempt to balance these materials with other, objective information. (EC §§ 51930(b)(4), 51933(c).)

## HOW DOES THE LAW PROMOTE HEALTHY RELATIONSHIPS FOR YOUTH?

The California Healthy Youth Act has a strong emphasis on healthy relationships, in both the purposes and the required content. Students must be taught knowledge and skills related to recognizing, building, and maintaining healthy relationships that are based on mutual affection and are free from violence, coercion and intimidation. This includes teaching decision-making and communication skills and helping students to understand the value of and prepare for committed relationships, such as marriage. It also includes information about unhealthy behaviors and risks to their health, such as sexual harassment, sexual assault, intimate partner violence, and sex trafficking. (EC §§ 51930(b); 51933(f), (g), (h); 51934(a)(10).)

## DOES THE LAW REQUIRE INSTRUCTION ABOUT LOCAL HEALTH RESOURCES?

Yes. The California Healthy Youth Act requires that students learn about local resources for sexual and reproductive health care, sexual assault and intimate partner violence. The law also requires instruction about how students can access those resources and their rights to access them. For example, under California law, minors aged 12 and above have the right to confidentially access and make their own decisions regarding reproductive health care, including birth control, prenatal care, abortion, and prevention of and treatment for HIV and STIs. (Family Code §§ 6925, 6926; *American Academy of Pediatrics v. Lungren*, 16 Cal.4th 307 (1997)). Students also have the right to obtain sensitive services, including reproductive health care, during school hours, and must be allowed to leave campus for the purpose of obtaining these services. (EC § 48205; EC § 46010.1; 87 Ops. Cal. Atty. Gen. 168, 172 (2004)). In these instances, schools are not allowed to require parental consent or notification, and must mark the student's absence as excused and allow the student to make up full credit for assignments or class time missed.

## DOES THE LAW REQUIRE INSTRUCTION ON CALIFORNIA'S AFFIRMATIVE CONSENT STANDARD?

Another law, distinct from the California Healthy Youth Act, also took effect in 2016. This law, Education Code § 51225.36, requires that all school districts that have health education as a graduation requirement must include instruction on California's affirmative consent standard. This standard is defined as follows: "Affirmative consent" means affirmative, conscious, and voluntary agreement to engage in sexual activity. It is the responsibility of each person involved in the sexual activity to ensure that he or she has the

affirmative consent of the other or others to engage in the sexual activity. Lack of protest or resistance does not mean consent, nor does silence mean consent. Affirmative consent must be ongoing throughout a sexual activity and can be revoked at any time. The existence of a dating relationship between the persons involved, or the fact of past sexual relations between them, should never by itself be assumed to be an indicator of consent.” (EC § 67386.)

Instruction on the affirmative consent standard is not mandatory for districts that do not require a health education course for graduation. The law also does not require that this instruction be provided within comprehensive sexual health and HIV prevention education. However, the California Healthy Youth Act does require that comprehensive sexual health education and HIV prevention education address healthy relationships and communication, and consent for sexual activity is an important component of this instruction. Therefore, there is natural overlap between the law relating to the affirmative consent standard and the California Healthy Youth Act.

#### WHAT DETERMINES WHETHER THE FACTS TAUGHT ARE MEDICALLY ACCURATE?

Instruction is medically accurate if it is verified or supported by proper scientific research, published in peer-reviewed journals as appropriate, and recognized as accurate and objective by agencies with expertise in the field, such as the federal Centers for Disease Control and Prevention (CDC), the American Public Health Association, the American Academy of Pediatrics, and the American College of Obstetricians and Gynecologists. (EC § 51931(f).)

#### WHAT DOES THE LAW SAY ABOUT LESBIAN, GAY, BISEXUAL, TRANSGENDER AND QUEER (LGBTQ) STUDENTS, SEXUAL ORIENTATION, AND GENDER/GENDER IDENTITY?

All instruction and materials in grades K-12 must be inclusive of LGBTQ students. Instruction shall affirmatively recognize that people have different sexual orientations and, when discussing or providing examples of relationships and couples, must be inclusive of same-sex relationships. (EC § 51933(d)(5).) It must also teach students about gender, gender expression, gender identity, and explore the harm of negative gender stereotypes. (EC § 51933(d)(6).) This means that schools must teach about sexual orientation and what being transgender means.

The California Healthy Youth Act requires that sexual health education be appropriate for use with students of all genders and sexual orientations and clearly states that part of the intent of the law is “to encourage a pupil to develop healthy attitudes concerning adolescent growth and development, body image, gender, sexual orientation, relationships, marriage, and family.” (EC § 51930.)

The California Healthy Youth Act also prohibits sexual health education classes from promoting bias against anyone on the basis of any category protected by Education Code § 220, which includes actual or perceived gender and sexual orientation.

## WHAT DOES THE LAW SAY ABOUT STUDENTS WITH DISABILITIES?

Instruction and materials must be appropriate for and accessible to students with disabilities. This includes but is not limited to providing a modified curriculum, materials and instruction in alternative formats, and auxiliary aids. (EC § 51933(d)(3).)

## WHAT DOES THE LAW SAY ABOUT STUDENTS WHO ARE ENGLISH LEARNERS?

The California Healthy Youth Act requires that instruction be made available on an equal basis to pupils who are English learners, whether they are placed in English immersion classes or alternative bilingual education classes, and must be consistent with the existing sex education curriculum. (EC § 51933(d)(2).) In addition, the law requires that instruction be appropriate for use with students of all races and ethnic and cultural backgrounds. (EC § 51933(d)(1).)

## DOES THE LAW PERMIT THE USE OF OUTSIDE SPEAKERS?

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 must 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. (EC § 51936.)

Instruction provided by outside consultants or guest speakers must fulfill the same requirements as instruction provided by employees of the school district. This instruction must be integrated into and may not conflict with other instruction or with the purposes of the law. If schools use outside consultants or guest speakers, they must provide parents with the name of the provider’s organization and the date of instruction at the beginning of the school year or no fewer than 14 days prior to the date of instruction.

## HOW DOES THE LAW SUPPORT FAMILY COMMUNICATION ABOUT COMPREHENSIVE SEXUAL HEALTH?

Instruction and materials shall encourage a student “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.” (EC § 51933(e).)

## WHAT DOES THE LAW SAY ABOUT PARENT/GUARDIAN NOTIFICATION AND CONSENT FOR INSTRUCTION?

Parents or guardians must be notified by the school or district at the beginning of the school year (or at the time of enrollment) about planned comprehensive sexual health and HIV prevention education, and must be given an opportunity to review materials. The school district must also inform parents/guardians about whether the instruction will be provided by district personnel or outside consultants. If instruction will be

provided by outside consultants, the notice must include the name and organizational affiliation of the outside consultant and the date of the instruction. The notice must also inform parents/guardians of their right to request copies of Education Code §§ 51933, 51934, and 51938. If arrangements for guest speakers or outside consultants are made after the initial notification is sent out at the beginning of the year, districts must notify parents at least 14 days prior to the instruction via mail or another commonly used method.

The law allows parents or guardians to remove their child from comprehensive sexual health and HIV prevention education, as defined in the statute (EC §§ 51931(b), (d), 51932.), using a passive consent or “opt-out” process. Schools may not require active consent (“opt-in”) for participation in comprehensive sexual health and HIV prevention education in any grade, including elementary school. (EC § 51938(a).) The notice sent to parents/guardians informing them about planned instruction must additionally inform them that they may remove their child from the instruction and that in order to do so they must state their request in writing to the school district. (EC § 51938(b)(4).) If the parent/guardian does not request in writing that the child be withheld, the child will attend the instruction. Schools may not require parents/guardians to return a signed acknowledgment that they have received the notice in order for their child to participate in the instruction; this serves as de facto active consent and is prohibited under the law.

#### WHAT DOES THE LAW SAY ABOUT PARENTAL/GUARDIAN CONSENT FOR SURVEYS?

In order to facilitate the collection of data needed by researchers to evaluate the effectiveness of comprehensive sexual health education and other unintended pregnancy prevention efforts, the law permits schools to administer anonymous, voluntary, confidential, age-appropriate surveys or questionnaires in which students are asked about their sexual activities and attitudes in order to measure their health behaviors and risks. Parents/guardian must be notified of any planned surveys or questionnaires, be given the opportunity to review these surveys or questionnaires and, in grades 7-12, be given the opportunity to request in writing that their child not participate. Schools may not adopt an active consent or “opt-in” policy for these surveys or questionnaires for students in grades 7 to 12. Prior to grade 7, parents must give active consent in order for their child to participate. (EC § 51938(c).)

#### WHAT DOES THE LAW SAY ABOUT ANTI-HARASSMENT, BULLYING PREVENTION OR SAFE SCHOOLS PROGRAMS?

School districts have an affirmative legal obligation to prevent bias-based bullying, harassment and discrimination and to create a safe and welcoming environment for all students. (EC §§ 201, 220.) The California Healthy Youth Act supports these efforts by requiring inclusive instruction and prohibiting biased instruction. The law does not permit parents to remove their children from anti-harassment programs or other instruction that discusses gender, gender identity, gender expression, sexual orientation, discrimination, harassment, bullying, intimidation, relationships, or family but does not discuss human reproductive organs and their functions. (EC § 51932(b).) This is to ensure that all students feel safe on and off campus knowing that all their peers received the same messages on acceptable and unacceptable behaviors, resulting in a positive school climate.

## DOES THE LAW REQUIRE TEACHERS TO BE TRAINED?

Comprehensive sexual health and HIV prevention education must be taught by instructors trained in the appropriate courses. (EC §§ 51934(a), (b).) This means that instructors must have knowledge of the most recent medically accurate research on human sexuality, healthy relationships, pregnancy, and HIV and other sexually transmitted infections. (EC § 51931(e).)

In addition, school districts must provide periodic training to all district personnel who provide HIV prevention education to enable them to learn new developments in the scientific understanding of HIV. Teachers with a demonstrated expertise in the field or who have received training from the California Department of Education, their affiliates or Centers for Disease Control and Prevention need not be additionally trained by the district. School districts may expand the training to include the topic of comprehensive sexual health education.

## ARE THE HEALTH FRAMEWORK FOR CALIFORNIA PUBLIC SCHOOLS AND THE CALIFORNIA HEALTH EDUCATION CONTENT STANDARDS CURRENT WITH RESPECT TO LEGAL REQUIREMENTS FOR COMPREHENSIVE SEXUAL HEALTH AND HIV PREVENTION EDUCATION?

No. The Health Framework is extremely outdated and is inconsistent with the California Healthy Youth Act; it should not be used. The California Health Education Content Standards, adopted in 2008, do not in most respects directly conflict with the California Healthy Youth Act but also do not include all required content. Therefore, the health standards should not be independently relied upon for developing or evaluating sexual health curriculum.

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A collaboration of the ACLU of Northern California, the ACLU of Southern California, and the ACLU of San Diego & Imperial Counties

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