

Questions and Answers about SB 71: The California Comprehensive Sexual Health and HIV/AIDS Prevention Act

A Guide for Parents, Students and Community members

On January 1, 2004, California replaced 11 confusing and contradictory laws on sex education and HIV/AIDS prevention instruction with a new unified chapter of the *Education Code*, the “California Comprehensive Sexual Health and HIV/AIDS Prevention Act” (Chapter 5.6, sections 51930-51939). This guide answers questions about the new law.

Do schools have to teach sex education?

No. Just as before the new law was passed, schools do not have to teach comprehensive sexual health education, which the law defines as: “education regarding human development and sexuality, including education on pregnancy, family planning, and sexually transmitted diseases.” (51931 (b)). But if schools choose to teach sex education, they must follow specific requirements about what they teach and about notifying parents.

Do schools have to teach HIV/AIDS prevention education?

Yes. Since 1992, California public schools have been required to teach HIV/AIDS prevention education at least once in middle school and once in high school. The new law does not change this. HIV/AIDS prevention education is defined as: “instruction on the nature of HIV/AIDS, methods of transmission, strategies to reduce the risk of human immunodeficiency virus (HIV) infection, and social and public health issues related to HIV/AIDS” (51931 (d)).

If schools do teach sex education, what do they have to cover?

According to the law, comprehensive sexual health education must:

- Be age appropriate;
- Be medically accurate and objective;
- Be equally available to English language learners;
- Be appropriate for use with pupils of all races, genders, sexual orientations, ethnic and cultural backgrounds;
- Be appropriate for and accessible to pupils with disabilities;
- Encourage students to communicate with their parents or guardians about human sexuality;
- Teach respect for marriage and committed relationships.

It may not teach or promote religious doctrine. It also may not violate the state’s non-discrimination policy by reflecting or promoting bias against anyone due to race, religion, disability, gender, sexual orientation, or other categories (see *Education Code* section 220.)

In grades 7-12, sex education classes must also teach about:

- Abstinence from sexual activity;
- Sexually transmitted diseases, their transmission, treatment, and prevention, including information about the effectiveness and safety of all FDA-approved methods of reducing the risk of contracting sexually transmitted diseases;
- The effectiveness and safety of all FDA-approved contraceptive methods;

- The California law allowing parents to surrender newborn babies to hospitals or other designated sites without legal penalty.
- Making and implementing responsible decisions about sexuality.

All of the above topics may also be included in classes taught prior to 7th grade.

What must HIV/AIDS prevention classes cover?

The new law does not significantly change the content requirements for HIV/AIDS prevention education, but it does require that HIV/AIDS prevention education follow the same general criteria as comprehensive sexual health education. HIV/AIDS prevention education must:

- Be age appropriate;
- Be medically accurate and objective;
- Be equally available to English language learners;
- Be appropriate for use with pupils of all races, genders, sexual orientations, ethnic and cultural backgrounds;
- Be appropriate for and accessible to pupils with disabilities;
- Encourage students to communicate with their parents or guardians about human sexuality.

It may not teach or promote religious doctrine. It also may not violate the state's non-discrimination policy by reflecting or promoting bias against anyone due to race, religion, disability, gender, sexual orientation, or other categories (see *Education Code* section 220.)

HIV/AIDS prevention instruction must provide information on:

- The nature of HIV/AIDS and its effects on the body;
- HIV transmission;
- Methods to reduce the risk of HIV infection, including both abstinence and condoms;
- Public health issues associated with HIV/AIDS;
- Local resources for HIV testing and medical care.

Classes must also assist students in developing refusal and decision-making skills, and must include discussion about societal views on HIV/AIDS, including stereotypes and myths regarding people living with AIDS. This instruction must emphasize compassion for people living with AIDS.

Can schools teach sex education and HIV/AIDS prevention education in elementary school?

Yes. Comprehensive sexual health education may be taught in grades K-12. No particular topics must be taught in elementary grades, but all instruction and materials must follow the same general criteria, listed above, as later grades.

HIV/AIDS prevention education may be taught in elementary school and must be taught at least once in middle school and once in high school. This education must follow the same general criteria as comprehensive sexual health education and must include the same topics as HIV/AIDS prevention education taught in later grades.

Does the law ban abstinence-only education?

Yes. “Abstinence-only” sex education, which presents abstinence as the only option for preventing pregnancy and sexually transmitted diseases, is not permitted in California public schools.

If sexuality and human development are covered, schools must cover birth control methods. Classes that provide instruction on human development and sexuality, in grades 7-12, must include medically accurate, up-to-date information about all FDA-approved methods for: 1) reducing the risk of contracting sexually transmitted diseases; and 2) preventing pregnancy. Classes that provide instruction on HIV/AIDS prevention must include medically accurate, up-to-date information on methods to reduce the risk of HIV infection, including the effectiveness rates of condoms and other contraceptives.

Instruction that emphasizes the benefits of abstinence while focusing exclusively on the failure rates or perceived disadvantages of condoms and other contraceptives is also prohibited by law. This would violate legal requirements that the instruction cover the effectiveness and safety (not solely the ineffectiveness) of condoms and other contraceptive methods and would also violate requirements that the instruction be medically accurate and objective.

What determines whether the facts taught are medically accurate?

As defined by the law, instruction is medically accurate if it is verified by proper scientific research and recognized as accurate and objective by agencies with expertise in the field, such as the CDC, the American Public Health Association, the American Academy of Pediatrics, and the American College of Obstetricians and Gynecologists.

Does the law contain new provisions concerning sexual orientation?

Yes. The law requires that sex education be appropriate for use with students of all 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 roles, sexual orientation, dating, marriage, and family.” The law prohibits sex education classes from teaching or promoting religious doctrine and from promoting bias against anyone on the basis of any category protected by the state’s school nondiscrimination policy, *Education Code* section 220, which includes actual or perceived gender and sexual orientation.

In addition, the law removes previous language referring to “abstinence until marriage” to reflect that, if today’s laws remain the same, not all students will have the right to marry their chosen life partner. And it replaces the previous requirement to teach “honor and respect for monogamous heterosexual marriage,” with the more inclusive requirement to teach “respect for marriage and committed relationships.”

An example of how sex education can be adapted to be appropriate for students of all sexual orientations is found in the new statutory language itself. The old law spoke of the value of abstinence from sexual intercourse in preventing pregnancy and sexually transmitted diseases. The new law refers to the value of abstinence from sexual intercourse in preventing pregnancy and the value of abstinence from sexual activity in preventing sexually transmitted diseases. This subtle change of language makes the statute inclusive of lesbian, gay, bisexual and transgendered

youth who were effectively excluded from the focus on abstinence from sexual intercourse. This change also provides more complete information to heterosexual youth who may be delaying “sexual intercourse” while engaged in other sexual activity.

Does the law contain new provisions concerning students with disabilities?

Yes. The law requires that instruction and materials be appropriate for use with pupils with disabilities and be accessible to them. This includes, but is not limited to, “the provision of a modified curriculum, materials and instruction in alternative formats, and auxiliary aids.” (51933(b)(5))

Does the law contain new provisions concerning students who are English language learners?

Yes. The law 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. The instruction they receive must be consistent with the existing sex education curriculum. In addition, the law requires that sexual health education classes be appropriate for use with students of all races and ethnic and cultural backgrounds.

Does the new law affect parental notification and consent policies?

Yes. The law recognizes that while parents and guardians overwhelmingly support the teaching of medically accurate, comprehensive sex education in schools, they have the ultimate responsibility for imparting values regarding human sexuality to their children and, consequently, may choose to withdraw their children from this instruction.

But the new law streamlines and clarifies the previous system for parental notification and consent. Parents or guardians must be notified by the school at the beginning of the school year about planned sex education and HIV/AIDS prevention education, be given an opportunity to review materials, and be given the opportunity to request in writing that their child not participate in the instruction. Schools are not permitted to adopt active consent or “opt-in” policies for either sex education or HIV/AIDS prevention education.

In addition, to facilitate the collection of data needed by researchers to evaluate the effectiveness of sex education and other teen pregnancy prevention efforts, the law has modified the parental consent procedures governing student assessments. The new 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 must be notified of any planned assessments, be given the opportunity to review the assessments and, in grades 7-12, be given the opportunity to request in writing that their children not participate. Schools may not adopt an active consent or “opt-in” policy for these assessments for students in grades 7 to 12. Prior to 7th grade, parents must give their active consent in order for their child to participate.

These parental notification and consent policies apply only to sexual health education, HIV/AIDS prevention education, and related assessments. The law does not permit parents to remove their children from anti-harassment programs or other instruction that discusses gender,

sexual orientation, or family life but does not discuss human reproductive organs and their functions.

Does the law permit the use of outside speakers?

Yes. Schools may contract with outside agencies with expertise in the field to provide comprehensive sexual health and/or HIV/AIDS prevention education, or to provide training to school personnel. Instruction provided by outside instructors must fulfill the same requirements as instruction provided by teachers employed by the school district. If schools use outside agencies as instructors or guest speakers, they must provide parents with the name of the agency and the date of instruction at the beginning of the school year or no fewer than 14 days prior to the date of instruction (as per AB 1925, signed into law August 2004).

Does the law require teachers to be trained?

Yes. Mandated HIV/AIDS prevention education must be taught by instructors trained in the appropriate courses. If school districts choose to teach comprehensive sexual health education, this subject must also be taught by instructors trained in the appropriate courses. The law defines “instructors trained in the appropriate courses” as: “instructors with knowledge of the most recent medically accurate research on human sexuality, pregnancy, and sexually transmitted diseases.” (51931(e))

In addition, as was true under previous law, school districts must provide periodic training to HIV/AIDS prevention teachers to enable them to learn new developments in the scientific understanding of HIV/AIDS. Teachers with a demonstrated expertise in the field or who have received training from the California Department of Education or CDC need not be additionally trained by the district. School districts may expand the training to include the topic of comprehensive sexual health education.

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For more information on SB 71, HIV/AIDS prevention education, and sexual health education in California schools, contact the ACLU or your local Planned Parenthood.