



Right of California Parents to Opt Children Out of Health and Sex Education

Over the past several decades, we have witnessed increased efforts to strip away the right of parents to direct the upbringing of their children. Some of the most heinous deprivations have occurred in the realm of education, where courts have ruled that parents do not have the right to prevent schools from indoctrinating their children with values that directly violate the parents' religious beliefs. These include lessons on sexual activity and behaviors, exploring different sexual orientations, and even encouraging children to question their biological sex. Oftentimes, schools do not even make parents aware that such education is going on.

With some courts refusing to uphold parents' constitutional rights, the most promising solution to protect these rights is through the legislative process—specifically laws that require parents to be notified before certain topics are discussed and allowing parents to opt their child out of any instruction that conflicts with the parents' values or beliefs. Fortunately, both federal law and California state law provide some legal protections that enable parents to know what is being taught to their child and to have their child excused from certain objectionable topics.

Parents have the right to inspect all instructional materials and to receive notification before comprehensive sex education is taught to their child.

Parents are often unaware of what books, presentations, and other instructional materials their child is being exposed to at their public school. But parents have a powerful tool to enable them to learn what is being taught to their child. Under the federal law known as the Protection of Pupil Rights Act (20 U.S.C. § 1232(h)), parents have the right to inspect all instructional materials used as part of their child's curriculum. The law further requires schools to “develop and adopt policies” regarding “the right of a parent of a student to inspect . . . any instructional material used as part of the educational curriculum for the student.”

Under the law, a parent can simply contact their school administrator and ask for an opportunity to examine all instructional materials used in their child's class. The school must provide the opportunity for the parent to inspect the materials within a reasonable period of time.

Additionally, California state law requires each school district to notify parents “at the beginning of each school year . . . about instruction in comprehensive sexual health education and HIV prevention education and research on pupil health behaviors and risks planned for the coming year.” Cal. Educ. Code § 51938. The notice must further advise parents that “written and audiovisual educational materials used in comprehensive sexual health education and HIV prevention education are available for inspection.”

Therefore, under these laws, you have a right to inspect every instructional material that is used as part of your child's education. And, in California, all local schools must notify parents at the beginning of each school year if their child is going to be taught comprehensive sex education.

Parents have the right to opt their child out of any health instruction or comprehensive sex education that conflicts with the parents' religious or moral beliefs.

California law provides parents with two statutory rights to have their child excused when certain objectionable topics or materials are being taught:

1. Health Instruction Opt-Out. California Education Code § 51240 allows a child to be excused from “any part of a school’s instruction in health” that conflicts with the “religious training and beliefs” or “personal moral convictions” of the parents.

What is included under “instruction in health”? While the statute doesn’t define the term, it is intended to be applied broadly. According to the bill report for AB 2525 (2004) which added the health instruction opt-out to California state law, the opt-out is “intended to allow pupils to exempt themselves from health education (as opposed to sex education) if such instruction conflicted with the pupil’s religious or moral views.” The report went on to explain how a previous version of the health instruction opt-out had been used by “Christian Scientists, who believe in the power of the mind to heal the body ... to exempt themselves from health education.”

Therefore, it is reasonable to conclude that any topic that falls under “health instruction” is subject to § 51240’s opt-out. For example, the California State Board of Education’s current “Health Education Content Standards for California Public Schools” includes the following topics under “health education”:

- sexual development, reproductive health, interpersonal relationships, body image, and gender roles;
- individual differences in growth and development, physical appearance, gender roles, and sexual orientation;
- individual, family, and cultural differences in relationships;
- health care providers for reproductive and sexual health services;
- health information, products, and services related to reproductive and sexual health; and
- local resources concerning reproductive and sexual health, including all FDA-approved contraceptives, HIV/STD testing, and medical care.

2. Sex Education Opt-Out. In addition to a broad opt-out for all health instruction, California law provides an opt-out from “all or part of comprehensive sexual health education, HIV prevention education, and assessments related to that education.” California Education Code § 51938. Instruction in these topics is defined to include “education regarding human development and sexuality, including education on pregnancy, contraception, and sexually transmitted infections” and “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.” Cal. Educ. Code § 51931.

Conclusion

It is up to parents to exercise their rights under these federal and state laws. Every parent should take the time to educate themselves on what is being taught to their child. And when instruction related to health or sex education conflicts with a family’s values or beliefs, parents have the right to have their child excused from class when the objectionable content is taught.