

CDE FAQ for Sexual Education, HIV/AIDS, and STDs

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 (EC) requirements for both HIV prevention education and comprehensive sexual health education which are summarized below.

What are the purposes of the California Healthy Youth Act?

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;
- 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 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)).

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 instructional criteria or baseline requirements listed below. Content that is required in grades 7-12 may also be included in an age-appropriate way in earlier grades. (EC §§ 51933, 51934(b).)

What are the instructional criteria 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 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 the value of and prepare students to have and maintain 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 including negotiation and refusal skills to assist students in overcoming peer pressure and using effective decision making skills to avoid high-risk activities.

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 instructional content is required in grades 7-12?

Instruction provided in grades 7-12, in addition to meeting the instructional criteria or 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 preventing and 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, HIV 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 human trafficking.

This is a summary of the law. 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 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." (emphasis added) (EC § 51934(a)(3).) "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, objective information about the effectiveness and safety of all federal FDA-approved methods for preventing HIV, other STIs, and pregnancy. (EC § 51934.)

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. Instruction and materials 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. (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 free from violence, coercion and intimidation. This includes teaching decision-making and communication skills and helping students 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. (EC §§ 51934(a)(8)) The law also requires instruction about how students can access those resources and their rights to access them. For example, under California law, minors may consent to confidential medical care related to reproductive health care, including prevention and treatment of pregnancy (under 18 years of age) and prevention and treatment for HIV and STIs (12 years and older). (California Family Code §§ 6925, 6926; EC § 46010.1; American Academy of Pediatrics v. Lungren, 16 Cal.4th 307 (1997); 87 Ops. Cal. Atty. Gen. 168, 172 (2004)).

In addition, 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. (EC § 48205; 87 Ops. Cal. Atty. Gen. 168, 172 (2004).) For further guidance on confidential medical release, please visit the National Center for Youth Law document -- Confidential Medical Release (PDF): Frequently Asked Questions from Schools and Districts.

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 (emphasis added). 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. (EC § 51933 (g).

What determines whether the facts taught are medically accurate?

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. Instruction is medically accurate if it meets this legal definition. (EC § 51931(f).)

What does the law say about lesbian, gay, bisexual, transgender and questioning (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 all sexual orientations and what being LGBTQ means.

The California Healthy Youth Act requires that sexual health education be appropriate for use with students of all genders and sexual orientations (EC § 51933(d)) and clearly states that part of the intent of the law is “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.” (EC § 51930(b)(2).)

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)(1) and (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 and alternative options for an English learner pupil as otherwise provided in the Education Code. (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 or materials provided by outside consultants or guest speakers must fulfill the same requirements as instruction provided by employees of the school district. All instruction and materials shall align with and support the purposes of the California Healthy Youth Act and may not be in conflict with them. (EC § 51933 (c).) Any outside organization used for instruction or materials must meet every tenet of the California Healthy Youth Act. 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. (EC § 51938 (b)(2).)

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).) This is an opportunity for parents/guardians to identify and inform their students about whom a trusted adult may be.

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 instruction in comprehensive sexual health and HIV prevention education and research on student health behaviors and risks. The notice must advise parents/guardians that the written and audiovisual educational materials used in the comprehensive sexual health education and HIV prevention education course are available for inspection. The school district must also inform parents/guardians about whether the instruction will be provided by district personnel or outside consultants or guest speakers. Further, all instruction and materials from outside consultants or guest speakers must meet all tenets of the law. If instruction will be provided by outside consultants or guest speakers, the notice must include the name and organizational affiliation of the outside consultant or guest speaker 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 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. (EC § 51938(b).)

In this notification, schools must advise parents/guardians that they have 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. (EC § 51938(b)(4).) Schools may not require active consent (“opt-in”) for participation in comprehensive sexual health and HIV prevention education. Parents/guardians must request in writing that their child not participate in the instruction (passive consent, or “opt-out”). If the parent/guardian does not request in writing that the child be withheld, the child will attend the instruction. (EC § 51938(a).)

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. (EC § 51938(c).) Prior to grade 7, parents must give active consent in order for their child to participate.

What does the law say about anti-harassment, bullying prevention or safe schools programs?

The Education Code provides that all pupils enrolled in California public schools have the inalienable right to attend classes on school campuses that are safe, secure and peaceful (Education Code §§ 201, 220, and 32261). Although, the California Healthy Youth Act does not specifically address anti-harassment, bullying prevention or safe school programs, other areas of the California Education Code do. (See Education Code sections 200, 220, and 32261.) This Act, including the “opt-out” provision, 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. (EC § 51932(b).) This is to ensure a positive school climate so that all students feel safe on and off campus knowing that all peers have the same basic understanding on acceptable and unacceptable behaviors.

Also, the CDE has more resources related to this issue on the CDE Web page. Please visit this CDE Web page for a legal advisory regarding application of California’s antidiscrimination statutes to transgender youth in schools.

And please visit this CDE Web page for frequently asked questions on fostering an educational environment that is safe and free from discrimination for all students, regardless of sex, sexual orientation, gender identity, or gender expression, and assisting school districts with

understanding and implementing policy changes related to AB 1266 and transgender student privacy, facility use, and participation in school athletic competitions.

Does the law require the 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. (EC § 51935).

Are the health framework for California public schools and the California Health Education Content Standards current with respect to legal requirement for comprehensive sexual health and HIV prevention program?

No. The Health Framework from 2003 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 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.

However, the California Department of Education, Instructional Quality Commission, and State Board of Education have begun the revision process for the Health Education Framework and expect completion by May 2019.