Information Sheet – 11/12/19 - Board of Trustees Meeting

TO: Board of Trustees Item: 8.5

FR: Celli Coeville

DATE: November 6, 2019

RE: Policy Revision, BP/AR 6142.1, Sexual Health & HIV/AIDS Prevention, Consider for Adoption

The Board Policy and Administrative Regulation, BP 6142.1, Sexual Health & HIV/AIDS Prevention policy have been updated to more directly reflect the goals of the California Healthy Youth Act, and reflect NEW LAW (SB 1104, 2018) which requires districts offering grades 6-12 to provide information on human trafficking prevention resources to parents/guardians by January 1, 2020. The policy also adds a timeline for notification to parents/guardians that they may request to excuse their child from comprehensive sexual health and HIV prevention education.

The Administrative Regulation has been updated to reflect NEW LAW (AB 1861, 2018) which requires that comprehensive sexual health education include specified information regarding human trafficking, and NEW LAW (AB 1868, 2018) which authorizes instruction regarding the potential risks and consequences of electronically sharing suggestive or sexually explicit materials. Section on "Professional Development" updated to reflect a legal requirement to provide periodic staff development regarding sexual abuse and human trafficking. The changes have been highlighted and indicated with red font.

Recommended Action: Approve the revised BP/AR BP/AR 6142.1, Sexual Health & HIV/AIDS Prevention

CSBA Sample
Board Policy
Sexual Health And HIV/AIDS Prevention Instruction

BP 6142.1
Instruction

Note: The following policy is for use by districts that offer any of grades 7-12. Education Code 51934 requires districts to provide comprehensive sexual health education and HIV prevention education to students in grades 7-12. See the accompanying administrative regulation for definitions and program requirements.

Note: Education Code 51934 also authorizes, but does not require, districts to provide age-appropriate comprehensive sexual health education prior to grade 7 on any of the topics specified in Education Code 51934. Districts that choose to provide such instruction prior to grade 7 may revise the following policy and administrative regulation accordingly.

Note: Sexual health education taught at any grade level must comply with the requirements of Education Code 51933.

The Governing Board desires to provide a well-planned, integrated sequence of medically accurate and inclusive instruction on comprehensive sexual health and human immunodeficiency virus (HIV) prevention. The district's educational program shall address the goals of the California Healthy Youth Act pursuant to Education Code 51930-51939, including providing ~~provide~~ students with the knowledge and skills necessary to protect them from risks presented by sexually transmitted infections ~~and~~, unintended pregnancy, sexual harassment, sexual assault, sexual abuse, and human trafficking and to have healthy, positive, and safe relationships and behaviors. The district's educational program shall also promote students' understanding of sexuality as a normal part of human development and ~~the~~ their development of healthy attitudes and behaviors concerning adolescent growth and development, body image, gender, gender identity, gender expression, sexual orientation, relationships, marriage, and family.

(cf. 5030 - Student Wellness)
(cf. 5141.22 - Infectious Diseases)
(cf. 5141.25 - Availability of Condoms)
(cf. 5146 - Married/Pregnant/Parenting Students)
(cf. 6142.8 - Comprehensive Health Education)

The district shall respect the rights of parents/guardians to supervise their children's education on these subjects and to impart values regarding human sexuality to their children.

Note: The following paragraph may be revised to reflect the grade levels offered by the district.

Comprehensive sexual health education and HIV prevention education shall be offered to all students in grades 7-12 ~~including~~ at least once in junior high or middle school and at least once in high school. (Education Code 51934)

(cf. 6143 - Courses of Study)

~~The district's curriculum shall support the purposes of the California Healthy Youth Act as specified in Education Code 51930-51939, be unbiased and inclusive of all students in the classroom, and be aligned with the state's content standards. The district shall respect the rights of parents/guardians to supervise their children's education on these subjects and to impart values regarding human sexuality to their children.~~

~~(cf. 5141.22 - Infectious Diseases)~~
~~(cf. 5141.25 - Availability of Condoms)~~
~~(cf. 5146 - Married/Pregnant/Parenting Students) (cf. 6143 - Courses of Study)~~

Note: Education Code 49381, as added by SB 1104 (Ch. 848, Statutes of 2018), requires districts that offer any of grades 6-12 to identify the most appropriate methods of informing parents/guardians of human trafficking prevention resources, and to provide such information through the identified methods by January 1, 2020. The following paragraph is for use by districts that maintain grades 6-12 and may be modified for districts that serve students in grades K-5.

The Superintendent or designee ~~may appoint a coordinator and/or an advisory committee regarding~~ shall identify appropriate methods for informing the school community about subjects related to the district's comprehensive sexual health and HIV prevention ~~curriculum~~ education. The ~~advisory committee shall represent a divergence of viewpoints and may participate in planning, implementing, and evaluating the district's program.~~ Superintendent or designee shall use such identified methods to inform parents/guardians of students in grades 6-12 about human trafficking prevention resources, as required pursuant to Education Code 49381.

~~(cf. 1220 - Citizen Advisory Committees)~~

Parent/Guardian Consent

Note: Education Code 51938 requires districts to notify parents/guardians about instruction in sexual health and HIV prevention and of their right to request that their child not receive the instruction. See the accompanying administrative regulation for details of the required notice.

Note: Pursuant to Education Code 51938, districts must use a "passive consent" or "opt-out" process regarding sexual health and HIV prevention education and any assessments related to that instruction. Thus, each student must receive the instruction unless the parent/guardian notifies the district in writing that the student should not receive the instruction.

Note: In addition, Education Code 51938 requires districts to use a passive consent or opt-out process to obtain parent/guardian consent when administering an anonymous, voluntary, and confidential research and evaluation tool to measure students' health behaviors and risks, including a test, questionnaire, or survey containing age-appropriate questions about sexual attitudes or practices. However, for any such research and evaluation tool administered prior to grade 7, Education Code 51513 requires that parents/guardians give permission before the instrument is administered to their child (i.e., "active consent").

Note: 20 USC 1232h mandates districts to adopt a policy regarding the district's arrangements to protect student privacy when such a survey is administered to any student, regardless of their grade level. See BP/AR 5022 - Student and Family Privacy Rights for language implementing this requirement.

~~Annually,~~ At the beginning of each school year or at the time of a student's enrollment, parents/guardians shall be notified, in the manner specified in the accompanying administrative regulation, that they may request in writing that their child be excused from participating in comprehensive sexual health and HIV prevention education. Students so excused by their parents/guardians shall be given an alternative educational activity. (Education Code 51240, 51938, 51939)

(cf. 5022 - Student and Family Privacy Rights)

A student shall not be subject to disciplinary action, academic penalty, or other sanction if the student's parent/guardian declines to permit the student to receive the instruction. (Education Code 51939)

Legal Reference:
EDUCATION CODE
220 Prohibition of discrimination
33544 Inclusion of sexual harassment and violence in health curriculum framework
48980 Notice at beginning of term
49381 Human trafficking prevention resources
51202 Instruction in personal and public health and safety
51210.8 Health education curriculum
51225.36 Instruction in sexual harassment and violence; districts that require health education for graduation
51240 Excuse from instruction due to religious beliefs
51513 Test, questionnaire, survey, or examination containing questions about beliefs or practices
51930-51939 California Healthy Youth Act
51950 Abuse, sexual abuse, and human trafficking prevention education
67386 Student safety; affirmative consent standard
HEALTH AND SAFETY CODE
1255.7 Parents surrendering physical custody of a baby

PENAL CODE
243.4 Sexual battery
261.5 Unlawful sexual intercourse
271.5 Parents voluntarily surrendering custody of a baby
UNITED STATES CODE, TITLE 20
1232h Protection of student rights
7906 Sex education requirements and prohibited use of funds

Management Resources:
CSBA PUBLICATIONS
Promoting Healthy Relationships for Adolescents: Board Policy Considerations, Governance Brief, August 2014
CALIFORNIA DEPARTMENT OF EDUCATION PUBLICATIONS
Health Education Content Standards for California Public Schools, Kindergarten Through Grade 12, 2008
Health Framework for California Public Schools: Kindergarten through Grade 12, 2003
HUMAN RIGHTS CAMPAIGN FOUNDATION PUBLICATIONS
California LGBTQ Youth Report, January 2019
WEB SITES
CSBA: http://www.csba.org
California Department of Education, Sex Education and HIV/AIDS/STD Instruction: http://www.cde.ca.gov/ls/he/se
California Department of Public Health: http://www.cdph.ca.gov
California Healthy Kids Resource Center: http://www.californiahealthykids.org
California Partnership to End Domestic Violence: http://www.cpedv.org
California Safe Schools Coalition: http://www.casafeschools.org
Centers for Disease Control and Prevention: http://www.cdc.gov
Human Rights Campaign: http://www.hrc.org/hrc-story/hrc-foundation
U.S. Food and Drug Administration: http://www.fda.gov

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CSBA Sample
Administrative Regulation
Sexual Health And HIV/AIDS Prevention Instruction

AR 6142.1
Instruction

Note: The following administrative regulation is for use by districts that maintain any of grades 7-12. Education Code 51934 requires districts to provide comprehensive sexual health education and HIV prevention education to students in grades 7-12.

Note: If the district chooses to provide age-appropriate sexual health education prior to grade 7 as authorized by Education Code 51934, it may revise the following administrative regulation accordingly.

Definitions

Comprehensive sexual health education means education regarding human development and sexuality, including education on pregnancy, contraception, and sexually transmitted infections. (Education Code 51931)

HIV prevention education means instruction on the nature of human immunodeficiency virus (HIV) and acquired immune deficiency syndrome (AIDS), methods of transmission, strategies to reduce the risk of HIV infection, and social and public health issues related to HIV and AIDS. (Education Code 51931)

(cf. 6142.8 - Comprehensive Health Education)
(cf. 6143 - Courses of Study)

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. (Education Code 51931)

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. (Education Code 51931)

General Criteria for Instruction and Materials

The Superintendent or designee shall ensure that the district's comprehensive sexual health and HIV prevention instruction and materials: (Education Code 51933)

1. Are age appropriate

2. Are ~~factually and~~ medically accurate and objective

3. ~~Align~~ Are aligned with and support the following purposes as specified in Education Code 51930:

a. 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

b. To provide students 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

c. To promote understanding of sexuality as a normal part of human development

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

e. To provide students with the knowledge and skills necessary to have healthy, positive, and safe relationships and behaviors

4. Are appropriate for use with English learners, students with disabilities, and students of all races, genders, sexual orientations, and ethnic and cultural backgrounds~~; students with disabilities; and English learners~~

(cf. 0410 - Nondiscrimination in District Programs and Activities)
(cf. 1312.3 - Uniform Complaint Procedures)
(cf. 6174 - Education for English Learners)

5. Are available on an equal basis to a student who is an English learner, consistent with the existing curriculum and alternative options for an English learner as otherwise provided in the Education Code

6. Are accessible to students with disabilities, including, but not limited to, the provision of a modified curriculum, materials, and instruction in alternative formats and auxiliary aids

(cf. 6159 - Individualized Education Program)

7. Do not reflect or promote bias against any person in protected categories of discrimination pursuant to Education Code 220

(cf. 0410 - Nondiscrimination in District Programs and Activities)

(cf. 1312.3 - Uniform Complaint Procedures)

8. 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

9. Teach students about gender, gender expression, and gender identity, and explore the harm of negative gender stereotypes

10. Encourage students to communicate with their parents/guardians and other trusted adults about human sexuality and provide the knowledge and skills necessary to do so

11. Teach the value of and prepare students to have and maintain committed relationships such as marriage

12. Provide students with knowledge and skills they need to form healthy relationships that are based on mutual respect and affection and are free from violence, coercion, harassment, and intimidation

(cf. 5145. 3 - Nondiscrimination/Harassment)

13. Provide students with knowledge and skills for making and implementing healthy decisions about sexuality, including ~~negotiation~~ communication and refusal skills to assist students in overcoming peer pressure and using effective decision-making skills to avoid high-risk activities

14. Do not teach or promote religious doctrine

Components of Sexual Health and HIV Prevention Education

The district's comprehensive sexual health education and HIV prevention education for students in grades 7-12, in addition to complying with the criteria listed above in the section "General Criteria for Instruction and Materials," shall include all of the following: (Education Code 51934)

1. Information on the nature of HIV and 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 behaviors 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 that abstinence from sexual intercourse is the only certain way to prevent unintended pregnancy

The 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.

(cf. 5141.25 - Availability of Condoms)
(cf. 5146 - Married/Pregnant/Parenting Students)

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 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 testing is the only way to know if one is HIV-positive.

8. Information about local resources, how to access local resources, and students' 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 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:

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 Health and Safety Code 1255.7 and Penal Code 271.5

c. The importance of prenatal care

***Note: Pursuant to Education Code 51934, comprehensive sexual health education must include information about sexual harassment, sexual assault, sexual abuse, and human trafficking. AB 1861 (Ch. 807, Statutes of 2018) amended Education Code 51934 to require that

the information on human trafficking include the components specified in items #10a and b below.***

10. Information about sexual harassment, sexual assault, ~~adolescent relationship abuse, intimate partner violence,~~ sexual abuse, and ~~sex~~ human trafficking, including:

a. Information on the prevalence and nature of human trafficking, strategies to reduce the risk of human trafficking, techniques to set healthy boundaries, and how to safely seek assistance if there is a suspicion of trafficking

b. Information on how social media and mobile device applications are used for human trafficking

Note: Education Code 51934 requires that the comprehensive sexual health instruction include information about adolescent relationship abuse, as provided below. For further information about adolescent dating abuse, see CSBA's governance brief Promoting Healthy Relationships for Adolescents: Board Policy Considerations.

11. Information about adolescent relationship abuse and intimate partner violence, including the early warning signs of each

Note: Education Code 51934, as amended by AB 1868 (Ch. 428, Statutes of 2018), authorizes districts to provide the instruction described below. The following paragraph may be revised to reflect district practice.

The district's comprehensive sexual health education and HIV prevention education shall include instruction regarding the potential risks and consequences of creating and sharing suggestive or sexually explicit materials through cell phones, social networking web sites, computer networks, or other digital media. (Education Code 51934)

Professional Development

The district's comprehensive sexual health education and HIV prevention education shall be provided by instructors trained in the appropriate courses who are knowledgeable of the most recent medically accurate research on human sexuality, healthy relationships, pregnancy, and HIV and other sexually transmitted infections. (Education Code 51931, 51934)

The Superintendent or designee shall cooperatively plan and conduct in-service training for all district personnel who provide HIV prevention education, through regional planning, joint powers agreements, or contract services. (Education Code 51935)

(cf. 4131 - Staff Development)

In developing and providing in-service training, the Superintendent or designee shall cooperate and collaborate with the teachers who provide HIV prevention education and with the California Department of Education (CDE). (Education Code 51935)

The district shall periodically conduct in-service training to enable district personnel to learn new developments in the scientific understanding of HIV. In-service training shall be voluntary for personnel who have demonstrated expertise or received in-service training from the CDE or Centers for Disease Control and Prevention. (Education Code 51935)

The Superintendent or designee may expand HIV in-service training to cover the topic of comprehensive sexual health education in order for district personnel teaching comprehensive sexual health education to learn new developments in the scientific understanding of sexual health. (Education Code 51935)

The Superintendent or designee shall periodically provide continuing education that enables district personnel to learn about new developments in the understanding of abuse, including sexual abuse, and human trafficking and current prevention efforts and methods. Such education may include early identification of abuse, including sexual abuse, and human trafficking of students and minors. (Education Code 51950)

Use of Consultants or Guest Speakers

Note: Pursuant to Education Code 51933, 51934, and 51936, the district's comprehensive sexual health and HIV prevention education may be taught by outside consultants or delivered by guest speakers at an assembly. Any such instruction must comply with the same requirements as instruction provided by the district and in accordance with Education Code 51930-51939. If the district elects to use outside consultants or guest speakers, parents/guardians must be provided additional notice about the speaker and the speaker's organization; see item #4 in the section below entitled "Parent/Guardian Notification."

The Superintendent or designee 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 and HIV prevention education or to provide training for district personnel. All outside consultants and guest speakers shall have expertise in comprehensive sexual health education and HIV prevention education and knowledge of the most recent medically accurate research on the relevant topic(s) covered in the instruction. The Superintendent or designee shall ensure that any instruction provided by an outside speaker or consultant complies with Board policy, administrative regulation, and Education Code 51930-51939. (Education Code 51933, 51934, 51936)

(cf. 6145.8 - Assemblies and Special Events)

Parent/Guardian Notification

Note: Education Code 51938 requires the district to provide parents/guardians the following notification. A sample notification letter is available on the California Department of Education's web site.

***Note: In addition, Education Code 49381, as added by SB 1104 (Ch. 848, Statutes of 2018),

requires districts that offer any of grades 6-12 to identify the most appropriate methods of informing parents/guardians of human trafficking prevention resources, and to provide such information through the identified methods by January 1, 2020; see the accompanying Board policy. Districts that combine such information with the annual notification required pursuant to Education Code 51938 may revise the following section accordingly.***

At the beginning of each school year or at the time of a student's enrollment, the Superintendent or designee shall notify parents/guardians about instruction in comprehensive sexual health education and HIV prevention education, as well as research on student health behaviors and risks, planned for the coming year. The notice shall advise parents/guardians: (Education Code 48980, 51938)

1. That written and audiovisual educational materials to be used in comprehensive sexual health and HIV prevention education are available for inspection

2. That parents/guardians have a right to excuse their child from comprehensive sexual health or HIV prevention education, or research on student health behaviors and risks, provided they submit their request in writing to the district

3. That parents/guardians have a right to request a copy of Education Code 51930-51939

4. Whether the comprehensive sexual health or HIV prevention education will be taught by district personnel or outside consultants and, ~~.If~~ if the district chooses to use outside consultants or ~~to hold an assembly with~~ guest speakers ~~to deliver comprehensive sexual health or HIV-prevention education, the notification shall include: (Education Code 51938)~~
for this purpose, the following information:

a. The date of the instruction

b. The name of the organization or affiliation of each guest speaker

c. Information stating the right of the parent/guardian to request a copy of Education Code 51933, 51934, and 51938

If the arrangements for instruction by outside consultants or guest speakers are made after the beginning of the school year, the Superintendent or designee shall notify parents/guardians by mail or another commonly used method of notification no fewer than 14 days before the instruction is given.

(cf. 5145.6 - Parental Notifications)

Nonapplicability to Certain Instruction or Materials

The requirements of Education Code 51930-51939 pertaining to instructional content, teacher training, and parental notification and consent shall not apply to the following: (Education Code 51932)

1. A 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 Education Code 51931

(cf. 6142.93 - Science Instruction)

2. Instruction ~~or~~, materials, presentations, or programming that discusses gender, gender identity, gender expression, sexual orientation, discrimination, harassment, bullying, intimidation, relationships, or family and ~~do~~ does not discuss human reproductive organs and their functions

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