



Curriculum Department
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MEMO

TO: Mrs. Debra Hendricks, Superintendent

FROM: Laura Wharff, Assistant Superintendent, Educational Services

DATE: April 11, 2018

SUBJECT: Update of Board Policy 6142.1 per legal counsel

The above referenced Board Policy came before the Board for updating on October 10, 2017. Prior to that meeting I contacted legal counsel to ascertain the legality of the phrase "The curriculum on human sexuality shall promote abstinence prior to marriage". (highlighted on the attached) In a phone call regarding that issue, I was advised that this statement would not be contradictory to Ed Code. Subsequent to the Board approving the policy with this language I received written communication from counsel following deeper research into this matter. Counsel advised the following:

While the promotion of abstinence before marriage may not be viewed exclusively as promoting a religious doctrine, it may reasonably be perceived as such and, therefore, would violate Education Code 51933. The law permits the use of medically accurate statements that abstinence is the only way to prevent sexually transmitted infections and unintended pregnancy, but not the promotion of any one particular lifestyle, such as abstinence before marriage. Whereas the statement that abstinence is the only way to prevent sexually transmitted infections and unintended pregnancy is rooted in medicine, a statement promoting abstinence before marriage may be perceived as rooted in a personal ideal or specific social context. However, in the context of instruction on healthy relationships, Education Code section 51933(f) permits the District to provide instruction on the value of committed relationships, such as marriage. While the law permits discussing the value of marriage, any instruction that specifically promotes abstinence before marriage, would violate Education Code section 51933.

In advance of February 20, 2018 meeting, I was asked to confer with counsel regarding the removal of "prior to marriage" from the policy as to whether that would comply with Education Code. It was further requested that I inquire as to potential liability to the District if the Board chose to keep in place the phrase in question.

Counsel continues to advise that the phrase; "The curriculum on human sexuality shall promote abstinence prior to marriage", with or without the clause "prior to marriage", is in violation of Ed Code. Should the Board keep that language in policy, *knowing that it is in violation of the law, would also constitute a violation of the Board's own Bylaws and Code of Ethics, specifically BB9271 which states in part, "Each board member must be*

aware of, and comply with, the constitutions of the State and Nation, the Education Code of the State of California, other laws pertaining to public education and established policies of the District”.

Potential liability to the district could include any or all of the following:

- *Concerns and discontent among the community in the event that interested community members discovered that the Board acted to implement a policy despite the high likelihood that it violates the law*
- *The Board as a whole or any individual Board member may be subject to a civil grand jury investigation as part of the process to present an accusation of willful or corrupt misconduct by an officer of a county, city, or member of a governing board or personnel commission of a school district (Gov. Code 3060)*
- *A civil lawsuit to enjoin the Board from implementing the policy, commonly termed an “injunction”. Any interested member of the community, such as a parent or a community watchdog group, may seek to bring an injunction to prevent the District from implementing the deficient board policy. Further, a court of competent jurisdiction ruling on the injunction matter may also order the District to revise its policies to ensure it is consistent and fully compliant with the law.*

With the above in mind, staff recommends:

1. Delete the sentence, “The curriculum on human sexuality shall promote abstinence prior to marriage”, from Board Policy 6142.1 to comply with Education Code, and,
2. Insert the following sentence: *The law permits the use of medically accurate statements that abstinence is the only way to prevent sexually transmitted infections and unintended pregnancy* as noted on the attached Board Policy.