

Question & Answer Guide On California's Parental Opt-Out Statutes:

Parents' and Schools' Legal Rights And Responsibilities Regarding Public School Curricula.

A Publication from the California Safe Schools Coalition

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1 Why was this question and answer guide developed?

Public school administrators, board members, and teachers in California may face the difficult task of balancing their responsibilities to make decisions about the content of curricular and other school activities, against parents' desire to control the content of their children's instruction, and/or "opt out" of controversial aspects of the curriculum.

California's education laws are complex, and both parents and school administrators are sometimes misled by false claims about "parental rights." Specifically, some advocacy groups have inaccurately claimed that California public schools may not implement diversity or tolerance curricula without parental permission.

This question and answer guide was developed by the California Safe Schools Coalition to provide accurate, reliable information on the rights, duties, and options of public schools, teachers, parents and students under California law.

2 Who determines the curriculum in public schools, under California law?

The California Constitution guarantees each student the right to a free public education. The state sets a basic outline for public school education through the Education Code and through administrative frameworks issued by the state Board of Education on various curricular areas such as health and science. However, schools are governed primarily at the local school district level. Parents have a constitutional right to choose a private education for their children. If they elect to send their children to public schools, parents have very limited rights to prevent their children from receiving the entire range of instruction available in public schools.

3 Under California law, what rights do parents have regarding public school curricula?

Under California Education Code § 51101, parents and guardians have the right to:

- Examine the curriculum materials of the class.
- Work with the schools to adopt policies that outline how parents, staff and students may share in the responsibility for development and well-being of the students.
- Observe classrooms and meet with teachers.
- Have a school environment for their child that is safe and supportive of learning.
- Be informed about the above rights to participate in the education of their children.

4 Are there any curriculum topics that public school parents have the right to receive prior notice about and/or opt their children out of?

There are some topics that parents have a right to notice about and/or the right to opt their children out of, but, outside of these specific topics, parents do not have any general right to notice and the opportunity to opt their children out of the curriculum.

Parents must receive written notice about and may opt their children out of the following topics or subjects of instruction in public schools:

- Health, family life education, and sex education. Parents have the right to prior notice, an opportunity to inspect and review instructional materials, and an opportunity to request that their children not attend, “any class in which human reproductive organs and their functions and processes are described, illustrated or discussed, whether the class is part of a course designated ‘sex education’ or ‘family life education’ or by some similar term.” California Education Code §51550.¹

Other sections of the Education Code provide narrower, more specific parental notice and opt-out rights in the area of health and sex education. For example, California Education Code § 51240 provides that parents may opt their children out of health, family life education, and sex education that conflicts with religious training or beliefs). Section 51555 provides that parents of children in grades k-12 must receive written prior notice of any instruction on sexually transmitted diseases, AIDS, human sexuality, or family life. Section 51820 provides that parents must receive notice and may opt their children out of venereal disease education classes.

- AIDS education. Schools must provide parents with written notice explaining the purpose and content of AIDS prevention instruction, and parents may request that AIDS prevention instruction not be given to their child. California Education Code § 51201.5. (As an alternative to this “opt out” process, school boards may choose to implement an “opt in” process, where written parental consent is required for each student prior to providing AIDS prevention instruction.)
- Guest Instructors on the topics of STDs, AIDS, human sexuality or family life. Parents must receive written notice before instruction on these topics is provided by an outside organization or guest speakers, either in individual classrooms, combined classes, or assemblies. California. Education Code § 51554.
- Questionnaires, Surveys, or Examinations. Parents must be notified in writing and give written permission before a student may participate in tests, questionnaires, surveys, or examinations containing questions about the students’ or their parents’ beliefs or practices in the areas of sex, family life, morality, and religion. California Education Code § 51513.

¹ However, this right to notice and opt-out does not apply to descriptions and illustrations of reproductive organs that appear in textbooks on physiology, biology, zoology, general science, personal hygiene or health. California Education Code § 51550.

Other than the specific topics and areas of instruction listed above, parents do not have a right to prior written notice and opportunity to opt out of any part of public school curricula, under California law.

5 Do parents have a constitutional right to prevent their children from receiving education in public schools on subjects they disapprove?

Almost never. Parents have filed a number of court cases seeking to prevent public schools from teaching their children controversial literature or subjects such as evolution, tolerance, or human sexuality, and have lost virtually every case. Courts have held that so long as the public school curricula are secular and reasonably related to educational goals, parents do not have veto power over the content of public school instruction. Parents do have a general right to control their children's upbringing, but if parents choose to place their children in public schools, parental rights are generally outweighed by the state's interests in educating students and avoiding disruption in the school curriculum.

When parents raise a specific objection to a part of the curriculum as violating their freedom of religion, the school should evaluate the nature of the claimed burden on religion to see whether an accommodation is feasible. Schools may wish to excuse students from non-essential activities (such as excusing a Jehovah's Witness student from a Valentine's Day party) but are not legally required to excuse students from curricular activities such as science or diversity education. The interests of the school and student in education outweigh parents' interests in preventing their children from being exposed to ideas that conflict with religious traditions.

6 May schools avoid controversy by deciding not to provide any instruction on human sexuality?

No. California law requires that public schools provide instruction on AIDS and AIDS prevention at least once in junior high or middle school and once in high school. This instruction must emphasize that sexual abstinence, monogamy, avoidance of multiple sexual partners, and abstinence from intravenous drug use are the most effective means for AIDS prevention, but also must teach students other means of reducing the risk of transmission, including medically accurate information about condoms and other contraceptives. California Education Code § 51201.5.

Aside from this required AIDS prevention education, public schools are not required to offer sexuality education. If schools choose to have sex education classes, they must satisfy criteria set out in California law, including a requirement that students learn accurate information on methods of contraception and their success and failure rates.

7 Do parents have the right to notice about and to opt their children out of diversity education programs that include discussions of sexual orientation or other controversial topics?

No. Diversity or tolerance education programs that focus on preventing verbal harassment, threats and violence against students are not “sex education” or “family life” programs within the meaning of the California Education Code. Parents do not have a right to receive notice about or to opt their children out of such programs. However, schools may choose to give parents information in advance to explain the purpose and content of these programs and enlist parental support and participation.

Diversity and tolerance education programs can help schools fulfill their obligation under California law to provide safe and supportive learning environments for all students, and to prohibit discrimination and harassment on the basis of sex, sexual orientation, gender, ethnic group identification, race, ancestry, national origin, religion, color, or mental or physical disability. California Constitution Art. 1, § 28(c); California Education Code § 51101; California Education Code § 200-220; Title 5, California Code of Regulations, § 4900(a). (Schools can seek assistance from the State Board of Education in developing these programs, because it is responsible for developing policies, curriculum guidelines, teacher and administrator training programs, grants, etc., to promote appreciation of diversity, discourage discriminatory attitudes, and prevent and respond to acts of hate violence in schools. California Education Code §§ 201(f), 233 & 233.8.)

Including discussions about how it is wrong to harass, threaten, or harm another person because of his or her sexual orientation or gender identity in diversity education programs is not only permissible, but important in ensuring schools’ compliance with anti-discrimination laws. So long as these programs do not include sexually explicit content (i.e. discuss the human reproductive organs and their functions), parents are not entitled to prior notice and the opportunity to opt their children out. Also, these programs must not include content that reflects adversely on any person’s religious beliefs, under California Education Code § 51500 and § 51501, so they should avoid instructing students that any specific religious view concerning homosexuality or gender is correct or incorrect.

Thus, by carefully articulating the purpose and content of diversity education programs, schools can both fulfill their legal duty to ensure a safe and nondiscriminatory school environment for all students, and also avoid violating parents’ notice and opt-out rights.