

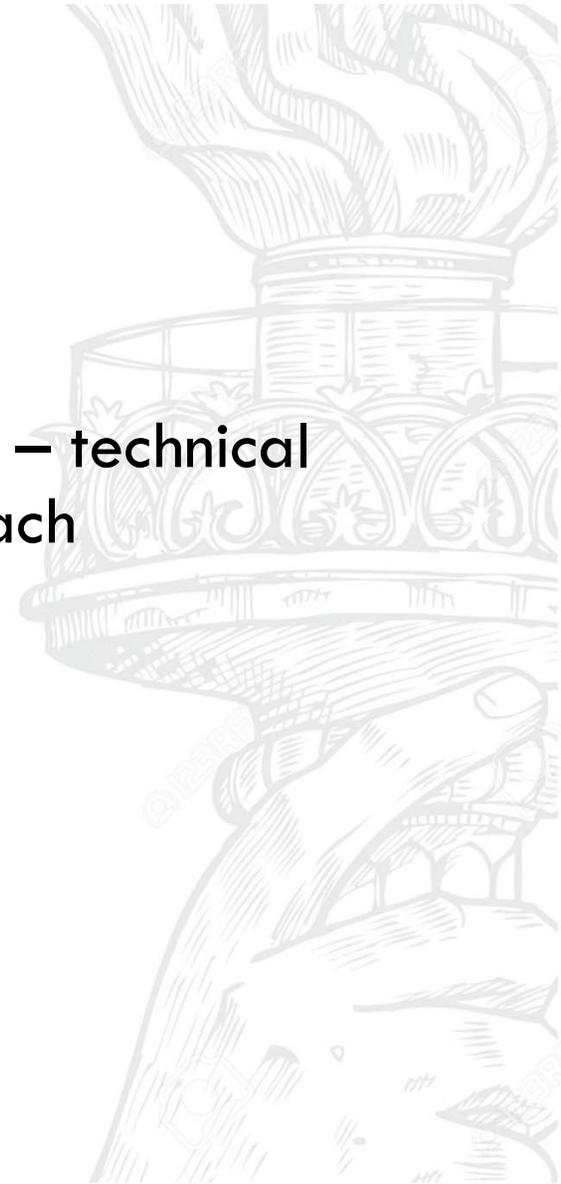
TITLE IX & CALIFORNIA LAW:  
**PREGNANT & PARENTING STUDENTS**

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# WHO WE ARE



- Community engagement – technical assistance, district outreach
- Public education
- Legislation
- Litigation



# DISCLAIMER

This presentation constitutes general information and not legal advice. Please consult an attorney, if needed.

# BREAKING DOWN EDUCATIONAL BARRIERS FOR CALIFORNIA'S PREGNANT & PARENTING STUDENTS



A REPORT BY THE ACLU OF CALIFORNIA

## Barriers in School:

- Shaming behavior and language by schools
- Unequal educational pathway (e.g., access to college-prep course)
- Punitive absence and make-up policies
- Lack of school-sponsored childcare and development centers
- Lactation accommodations

Available online at:

<https://www.aclunc.org/publications/breaking-down-educational-barriers-californias-pregnant-parenting-students>

# DISCRIMINATION

**Federal:** Title IX 20 U.S.C. 1681 *et seq.*

**California:** California Sex Equity in Education Act EDUCATION CODE 200 *et seq.*

Unruh Civil Rights Act CIVIL CODE 51 *et seq.*

Prohibit discrimination on the basis of “sex” & “gender”

IN OTHER WORDS,

34 C.F.R. 106.40(a), (b)(1)  
CAL. CODE REGS. tit. 5, 4950(a)

*pregnancy, childbirth, false pregnancy, termination of pregnancy, or recovery therefrom or related medical conditions; parental, family, or marital status*

# DISCRIMINATION: TRANSGENDER STUDENTS

Transgender students, including male-identifying students, can be pregnant too.

Under both Title IX and California law, it is prohibited sex discrimination to treat transgender people differently or to subject them to harassment, or create a hostile environment because they:

- Fail to conform to sex stereotypes
- Are transitioning or have transitioned genders

EDUCATION CODE 220; see also U.S. DEP'T OF EDUCATION guidance, <http://translaw.wpengine.com/wp-content/uploads/2014/04/qa-201404-title-ix.pdf>

# HARASSMENT

Where school is *aware of* or *should reasonably be aware of*, must take steps to protect students from harassment based on sex, including harassment because of pregnancy or related conditions.

## FOR EXAMPLE:

- Sexual comments or jokes
- Sexually charged names
- Spreading rumors about a student's sexual activity
- Sexual propositions or gestures
- Singling out in classrooms by teachers

# PARTICIPATION IN ACTIVITIES AND SPORTS

Students cannot be excluded or denied participation from any educational program, activity, or class solely on the basis of pregnancy, childbirth, false pregnancy, termination of pregnancy, or recovery therefrom.

## FOR EXAMPLE:

- PE class
- Advanced placement or honors classes or programs
- Extracurricular programs
- Interscholastic sports
- Opportunities for student leadership

**SCHOOLS SHOULD NOT PRESUME A PREGNANT STUDENT IS UNABLE TO PARTICIPATE IN A SCHOOL ACTIVITY BECAUSE OF PREGNANCY.**

# EXCUSED ABSENCES

Schools can't set deadlines for students to return after pregnancy:

Must excuse absences due to pregnancy or childbirth for as long as the student's doctor deems medically necessary.

34 C.F.R. 160.40(b)(5)



Absences related to an illness or medical appointment of a *custodial child* must also be excused.

EDUCATION CODE 48205(a)(6)

# REQUIRING A DOCTOR'S NOTE



For excused absences and participation in activities, schools may require pregnant or parenting students to submit a doctor's note *only if other students with physical or emotional conditions that require the attention of a doctor are also required to submit a note.*

34 C.F.R. 106.40(b)(2); CAL. CODE REGS. tit. 5 § 4950(b)

# MAKE-UP WORK

**Students must be allowed to make up work:** Students with an excused absence must be allowed to make up any assignment, activity, exam, participation points, or class time they missed due to the absence.

TITLE IX; EDUCATION CODE 48205

**Time given for making up work can't be one-size-fits-all:** Determined by what is “*reasonable*” under the circumstances.

EDUCATION CODE 48205

# SEPARATE PROGRAMS

EQUAL

TITLE IX

COMPARABLE

“[A] separate program for pregnant students need not be identical to the program offered to non-pregnant students... [but] there must be an equivalence between the programs.”

*Cecilia G. v. Antelope Valley Union High School District*, No. 04-7275 (C.D. Cal. Dec. 1, 2005);  
Order Den. Defs.’ Mot. For Summ. J., 21, July 27, 2005, ECF No. 51

VOLUNTARY

Students can’t be required to participate in pregnant minor programs or alternative educational programs.

34 C.F.R. § 106.40(b)(1); CAL. CODE REGS. tit. 5 § 4950(c)

# REASONABLE ACCOMMODATIONS

Schools must treat pregnancy, childbirth, or related conditions the same way and under the same policies as any other temporary medical condition.

If the school offers any programs, services, or reasonable accommodations for students with temporary medical conditions, accommodations must also be offered to pregnant students or those with related conditions.

# LACTATION ACCOMMODATIONS

A.B. 302 (2015), *codified at* EDUCATION CODE 222

- Provide students with access to a **private, secure room** with a **power source** to deal with any needs associated with breastfeeding or expressing milk
- Allow lactating students to bring a **breast pump** to school and **store** expressed milk
- Provide students with **reasonable break time** or time away from the classroom to accommodate their lactation schedule without incurring an academic penalty and with the ability to make up any work missed; and
- Investigate all **complaints** of noncompliance with the law in accordance with the Uniform Complaint Procedure.

# TITLE IX COORDINATOR

All recipients of federal financial assistance must designate at least one employee to coordinate their efforts to comply with and carry out their responsibilities under Title IX.

34 C.F.R. 106.8(a)

## COORDINATOR RESPONSIBILITIES

### ENSURING COMPLIANCE

- Have knowledge of district policies and procedures on sex discrimination
- Involved in drafting and revision of same

### COMPLAINTS

- Coordinate implementation and administration of procedures for resolving Title IX complaints
- Educate school community about how to file them

### TRAINING & TECHNICAL ASSISTANCE

- Ensure all staff and students are aware of their rights and obligations under Title IX

# ENFORCING STUDENTS' RIGHTS

**Uniform Complaint Procedure:** Students in California schools can file discrimination, harassment, bullying and intimidation complaints with their school district under the Uniform Complaint Procedure Act, and appeal school district decisions to the California Department of Education

- <http://www.cde.ca.gov/re/cp/uc/>

**Office of Civil Rights Complaints:** Students can also file discrimination complaints with the Department of Education, Office of Civil Rights

- <http://www2.ed.gov/about/offices/list/ocr/complaintintro.html>

# ADDITIONAL RESOURCES

U.S. DEP'T OF EDUCATION; *Supporting the Academic Success of Pregnant and Parenting Students* (June 2013):

<http://www2.ed.gov/about/offices/list/ocr/docs/pregnancy.pdf>

U.S. DEP'T OF EDUCATION; *Title IX Resource Guide* (April 2015):

<http://www2.ed.gov/about/offices/list/ocr/docs/dcl-title-ix-coordinators-guide-201504.pdf>

ACLU OF CALIFORNIA; *My School My Rights*:

<https://www.myschoolmyrights.com/>

# WHY IS CONFIDENTIALITY SO IMPORTANT?

- Patients forgo care for sensitive issues.
- Survivors of violence choose not to seek care when there is risk an abusive partner or parent or guardian may find out.
- Patients with private insurance choose to enroll in public insurance plans to avoid privacy breaches.
- Etc.

# CONFIDENTIAL MEDICAL RELEASE

Students (12+) have the right to be released from school to obtain confidential medical services *without the knowledge or consent* of a parent or guardian.

- Reproductive health services
- Mental health services
- Substance abuse treatment
- Domestic violence counseling, etc.

EDUCATION CODE 46010.1, 48205; 87 OPS. CAL. ATTY. GEN. 168, 172 (2004)

Schools, district, or staff *are not liable* if something happens to a student while they are off campus at a confidential medical appointment.

EDUCATION CODE 44808; GOVERNMENT CODE 815(a); see *Guerrero v. South Bay Union Sch. District*, 114 Cal. App. 4th 264, 269 (Ct. App. 4th 2003)

# CONFIDENTIAL MEDICAL RELEASE

## ALWAYS:

- Mark absence as excused.
- Students allowed to make-up any missed assignments or class time.
- Ensure policies and practices enable students to leave campus to obtain confidential medical release without accidentally triggering notice to parents/guardians.

## NEVER:

- Require prior parental consent.
- Notify parent/guardian when student leaves campus.

## SOMETIMES:

- Ask for verification of appointments.\*

\* BUT MAY NOT ask for purpose of appointment.

**Additional Resource:** TeenHealthLaw.org, NATIONAL CENTER FOR YOUTH LAW

<http://www.teenhealthlaw.org/fileadmin/teenhealth/teenhealthrights/ca/FAQ-ConfidentialMedicalRelease-11-2015.pdf>

# CONFIDENTIALITY: THE GENERAL RULE

Providers and insurers must protect the confidentiality of personal health information.

Usually, they must have a signed “authorization” from patient in order to share protected health information.

## EXCEPTIONS:

- Reporting certain violence
- Reporting child abuse
- Sharing for health care operations
- Billing and payment processing

# CA CONFIDENTIAL HEALTH INFORMATION ACT

S.B. 138 (2013), *codified in relevant part at* CIVIL CODE 56.107; INSURANCE CODE 791.29

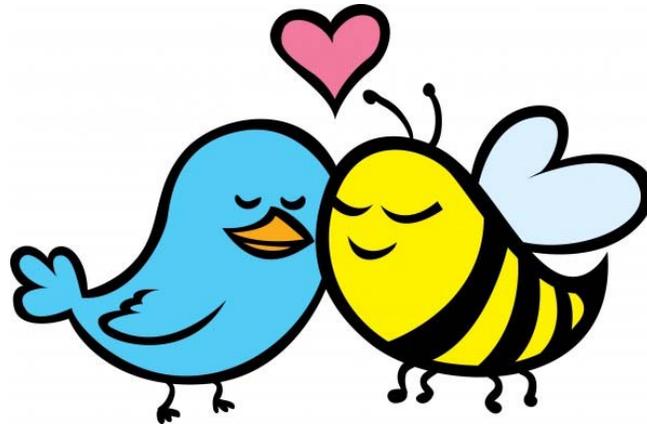
Patients may request and insurers must honor confidential communications requests when:

- 1) Patient seeks sensitive services
- 2) Patient believes disclosure could lead to harm or harassment

**Confidential communications request:** Patient requests communications from insurer by alternative means or at alternative locations

Additional Resource: [MyHealthMyInfo.org](http://MyHealthMyInfo.org)

# COMPREHENSIVE SEXUAL HEALTH EDUCATION



## California Healthy Youth Act

A.B. 329 (2015), *codified at* EDUCATION CODE 51930-51939

# CA HEALTHY YOUTH ACT

- Signed into law October 1, 2015. *Effective as of January 1, 2016.*
- All districts required to provide *both comprehensive sexual health education and HIV prevention education* to students *at least twice*—once in middle school and once in high school.
- Reinforces a focus on healthy attitudes, healthy behaviors, and healthy relationships.
- Expands and strengthens existing requirements that instruction and materials be appropriate for students of all sexual orientations and genders.
- Some new requirements and required topics (e.g., adolescent relationship abuse and sex trafficking).

# REQUIREMENTS

- ✓ At least once in **junior high/middle school** and at least once in **high school**, starting in grade 7. May be provided in age-appropriate way before grade 7.

EDUCATION CODE 51934(a)

- ✓ **Age-appropriate.**

EDUCATION CODE 51933(a)

- ✓ **Medically accurate and objective.**

EDUCATION CODE 51933(b)

**Medically accurate:** “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

# REQUIREMENTS

ALL GRADES, INCLUDING ELEMENTARY

- ✓ **All components** align with and support the purpose of the California Healthy Youth Act.

EDUCATION CODE 51933(c)

- ✓ Tone and content consistent across all instruction and materials.
- ✓ Regardless of who provides *each* component.

# PURPOSE

EDUCATION CODE 51930

To provide students with integrated, comprehensive, accurate, and unbiased comprehensive sexual health and HIV prevention education at least once in middle school and once in high school.

To ensure that students develop the knowledge and skills necessary to:

- Protect their sexual and reproductive health from HIV/STIs and unintended pregnancy
- Develop healthy attitudes concerning adolescent growth and development, body image, gender, sexual orientation, relationships, marriage, and family; and
- Have healthy, positive, and safe relationships and behaviors.

To ensure that students understand sexuality as a normal part of human development.

# REQUIREMENTS

ALL GRADES, INCLUDING ELEMENTARY

- ✓ **Knowledge and skills based.**

EDUCATION CODE 51930(b), 51933(g), (h)

- ✓ **Not promoting of any religious doctrine.**

EDUCATION CODE 51933(i)

- ✓ **Accessible to:**

- ✓ English learners, and
- ✓ Students with disabilities.

EDUCATION CODE 51933(d)(2), (3)

# REQUIREMENTS

ALL GRADES, INCLUDING ELEMENTARY

- ✓ Do not reflect or promote **bias** against any person on the basis of:
  - ✓ Disability
  - ✓ Gender
  - ✓ Gender identity
  - ✓ Gender expression
  - ✓ Nationality, race, or ethnicity
  - ✓ Religion
  - ✓ Sexual orientation

EDUCATION CODE 51933(d)(4); see also EDUCATION CODE 220

- ✓ Culturally **inclusive** and **appropriate** students of all:
  - ✓ Races
  - ✓ Genders
  - ✓ Sexual orientations; and
  - ✓ Ethnic and cultural backgrounds

EDUCATION CODE 51933(d)(1)

# REQUIREMENTS

ALL GRADES, INCLUDING ELEMENTARY

- ✓ Recognize that people have different sexual orientations and examples of relationships also include same-sex relationships.

EDUCATION CODE 51933(d)(5)

- ✓ Include instruction on:
  - ✓ Gender
  - ✓ Gender expression
  - ✓ Gender identity; and
  - ✓ The harms of negative gender stereotypes.

EDUCATION CODE 51933(b)(6)

# REQUIREMENTS

ALL GRADES, INCLUDING ELEMENTARY

- ✓ Encourages students to communicate with parents, guardians, or other trusted adults and provides knowledge and skills necessary for these discussions.

EDUCATION CODE 51933(e)

- ✓ Teaches the value of and prepares students to form and maintain healthy, committed relationships based on mutual respect and affection, and are free from violence, coercion, and intimidation.

EDUCATION CODE 51933(f), (g)

# REQUIREMENTS

GRADES 7-12

- ✓ **Nature and transmission of HIV and other STIs.**  
EDUCATION CODE 51934(a)(1), (2), (5)
- ✓ **HIV and STI prevention and treatment.**  
EDUCATION CODE 51934(a)(4), (6)
- ✓ **Social views on HIV and AIDS, including stereotypes and myths, and emphasizing:**
  - ✓ Successfully treated HIV-positive individuals have a normal life expectancy;
  - ✓ All people are at some risk of contracting HIV; and
  - ✓ The only way to know if one is HIV-positive is to get tested.

EDUCATION CODE 51934(a)(7)

# REQUIREMENTS

GRADES 7-12

- ✓ Effectiveness and safety of all FDA-approved contraceptive methods.  
EDUCATION CODE 51934(a)(9)
- ✓ Abstinence as the only certain way to prevent HIV, STIs, and unintended pregnancy.  
EDUCATION CODE 51934(a)(4), (6)
- ✓ Value of delaying sexual activity, *while mentioning other methods of preventing HIV, STIs, and unintended pregnancy.*  
EDUCATION CODE 51934(a)(7)

ABSTINENCE-ONLY EDUCATION IN CALIFORNIA  
HAS BEEN STRICTLY PROHIBITED SINCE 2004.

# REQUIREMENTS

GRADES 7-12

- ✓ Includes information about pregnancy, including:
  - ✓ The importance of prenatal care;
  - ✓ Objective discussion of all legally available pregnancy outcomes, including parenting, adoption, and abortion; and
  - ✓ Information about the CA newborn safe-surrender law.

EDUCATION CODE 51934(a)(9)

# REQUIREMENTS

GRADES 7-12

- ✓ **Sexual assault, adolescent relationship abuse, and intimate partner violence.**

EDUCATION CODE 51934(a)(10)

- ✓ **Sexual harassment.**

EDUCATION CODE 51934(a)(10)

- ✓ **Sex trafficking.**

EDUCATION CODE 51934(a)(10)

- ✓ **Local resources and student rights about:**

- ✓ Accessing sexual and reproductive health care; and
- ✓ Assistance with sexual assault and intimate partner violence.

EDUCATION CODE 51934(a)(6)

# PARENTAL NOTIFICATION & OPT-OUT

EDUCATION CODE 51938

At the beginning of the school year...\*

**Notice:** Districts must notify parents of the instruction and provide them with opportunities to view the curriculum and other instructional materials.

**Opt-out:** Districts must also allow parents to remove their student from instruction if they so choose, using a passive consent (“opt-out”) process in which **parents must request in writing** that their student not receive the instruction.

Districts may not require active consent (“opt-in”) by requiring that students return a permission slip in order to receive the instruction.

This applies to all grades, including elementary.

\* Or at time of enrollment, for students enrolling late

# ADDITIONAL RESOURCES

CA DEP'T OF EDUCATION: COMING SOON

ACLU OF NORTHERN CALIFORNIA: [https://www.aclunc.org/sex\\_ed](https://www.aclunc.org/sex_ed)

- Fast Facts for Districts
- Frequently Asked Questions (developed by the CA Sexual Health Education Roundtable)
- Q&A for School Districts
- Compliance Evaluation Checklist
- Sample Parent/Guardian Notification Letter
- Curricular Materials and Resources

# QUESTIONS?

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