



VIA E-MAIL AND ONLINE SUBMISSION

January 10, 2019

California State Board of Education
E-mail: healtheducationframework@cde.ca.gov

Re: Comment(s) on Proposed Health Education Framework

Dear Chair and Members of the Board of Education:

Please consider this the official comment(s) of Pacific Justice Institute for the proposed Health Education Curriculum Framework (hereafter, Framework), which will soon be coming before the Board for review. By way of introduction, PJI is a legal organization that educates, advocates and litigates on behalf of religious freedom, parental rights in education, the sanctity of life, and related constitutional freedoms.

INTRODUCTION

The proposed Framework incorporates a startling number of highly controversial and unscientific concepts into the K-12 context. We will address our comments to just a few of these, in the areas of gender identity, sexual education, promotion of controversial groups, and “spiritual abuse.” We are greatly concerned that many of the newer concepts injected into the Framework for the first time reflect undue influence from special interest groups that do not share the views and values of millions of Californians. Adoption of the Framework as proposed would take health instruction in a different direction more focused on ideology than evidence-based, scientific and truly inclusive education.

Undermining parental and community values on Gender

The Framework contains several gratuitous infusions of radical gender theory that are unscientific. Chapter 3 (Grades TK-3) contains the following passage at pp. 43-44, lines 1104-1131:

Students also learn about individual differences, including gender, from a very early age. Gender socialization begins before children start school—students may believe that different norms are associated with people of particular genders by the time they enter kindergarten. While this understanding may be limited, students can still begin to challenge gender stereotypes in a way that is age appropriate. While students may not fully understand the concepts of gender expression and identity, some children in kindergarten and even younger have identified as transgender or understand they have a gender identity that is different from their sex assigned at birth. This may present itself in different ways including dress, activity preferences, experimenting with dramatic play, and

feeling uncomfortable self-identifying with their sex assigned at birth. However, gender non-conformity does not necessarily indicate that an individual is transgender, and all forms of gender expression should be respected. *My Princess Boy* by Cheryl Kilodavis is an age-appropriate book that can be used to demonstrate gender differences and inclusion. (See the Access and Equity chapter for additional information about inclusive instruction.)

Dispelling myths about gender expectations in kindergarten can lay the groundwork for acceptance, inclusiveness, and an anti-bullying environment in schools. Gender non-conformity and physical characteristics are often at the root of many forms of bullying. As students learn to accept differences and unique characteristics of others, they also learn about the characteristics of bullying and how to avoid being a bully (K.1.3.G, K.1.6.–7.S, Essential Concepts; K.7.2.M, Practicing Health-Enhancing Behaviors). Discuss gender with kindergarteners by exploring gender stereotypes and asking open-ended questions, such as what are preferred colors, toys, and activities for boys/girls, and then challenging stereotypes if presented. Throughout this discussion, show images of children around the same age who do not conform to typical gender stereotypes. Examples do not have to be exaggerated or overt. Simple differences, such as colors or toy preferences, can demonstrate acceptance of gender non-conformity.

We strongly object to the promotion of this unscientific approach that affronts the values of millions of Californians who continue to believe that sex and gender are determined by biology and not ideology. These concerns are well taken; the Framework utterly ignores the more than 6,500 genetic differences between male and female.¹ This is but one of the many scientific dimensions to a complex debate that the Framework reduces to a level that greatly undermines the document’s credibility.

Moreover, young children will be needlessly traumatized when their parents’ values are openly challenged. What is a kindergarten boy to think when he plays with trucks and chooses to leave the house wearing his favorite blue shirt, only to be told by an authority figure at school that the toys and clothes his parents have given him are wrong? This type of experimentation with children’s minds might belong, if at all, in a sociology study with parental waivers of liability; it has no legitimate place in health class. Nor can this be justified by references to combating bullying. Nowhere do the provisions of Education code Sections 220 et seq. direct teachers to actively challenge parents’ values.

There is a growing misconception among some educators that LGBT rights negate parental rights. Not so. In fact, in the landmark same-sex marriage decision, *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015), Justice Kennedy traced the development of privacy and liberty interests to their origins in parental rights decisions such as *Pierce v. Society of Sisters*, 268 U.S. 510

¹ “Researchers Identify 6,500 Genes That Are Expressed Differently in Men and Women,” *Weizmann Wonder Wander* (Weizmann Institute of Science), May 3, 2017, online at: <https://wis-wander.weizmann.ac.il/life-sciences/researchers-identify-6500-genes-are-expressed-differently-men-and-women>; reporting on: Moran Gershoni and Shmuel Pietrokovski, “The landscape of sex-differential transcriptome and its consequent selection in human adults,” *BMC Biology* 15:7 (2017), which says, “[T]here are over 6500 protein-coding genes with significant SDE [sex-differential expression] in at least one tissue.” Online at: <https://bmcbiol.biomedcentral.com/track/pdf/10.1186/s12915-017-0352-z>.

(1925). If anything, gender self-identification rights are derivative from—and certainly do not displace—parental and family autonomy.

By contrast, the Legislature has shown sensitivity to the conflicts that can be created by controversial discussions of sex and gender. To that end, it is established public policy to involve parents. *See*, Education Code Section 51937, quoted *infra*. What is true in the upper grades for sex education is even more imperative in the lower grades when it comes to discussions of sex and gender. Chapter 3 of the Framework undermines public policy by encouraging educators to actively challenge the gender understandings that young students are given by their parents.

Promotion of controversial groups

Chapter 5 (Grades 7-8), pg. 27 lines 730-733, states as follows:

Guest speakers from your local public health department sexual health clinic, or local nonprofit organizations, such as Planned Parenthood, may have well-informed sexual health educators and age-appropriate materials to support comprehensive sexual health education.

Chapter 6 (Grades 9-12) similarly promotes Planned Parenthood at pg. 29, lines 768-777:

Students learn about and are able to describe the short- and long-term effects of HIV/AIDS and STIs and evaluate how growth, development, relationships, and sexual behaviors are affected by internal and external influences. Students are able to identify local resources that provide reproductive and sexual health services. Guest speakers from the local public health department, sexual health clinic, or nonprofit organizations such as Planned Parenthood may have well-informed sexual health educators and age-appropriate materials on conception or pregnancy/STI/HIV prevention (9–12.3.2.G, Accessing Valid Information). Speakers may be bilingual and represent students’ ethnicities and cultures. All guest speakers must be vetted and meet statutory requirements and local educational agency policy.

It need hardly be explained that Planned Parenthood, the nation’s largest abortion provider, is one of the most controversial organizations in America. For decades, it has been a litigant in some of the most divisive cases on the Supreme Court’s docket. *See, e.g., Planned Parenthood for Southeastern Penn. V. Casey*, 505 U.S. 833 (1992). And for this and many other reasons, it has been seen as too controversial to even advertise in schools, much less be promoted by them. *Planned Parenthood v. Clark County*, 941 F.2d 817 (9th Cir. 1991).

Within the last few years, it has been the subject of Congressional investigations and in some states, criminal probes. Last year, one of its ad campaigns in New York City was so profanity-laced that it could not be repeated by or shown by mainstream news outlets, nor could it be shared with children. Depending on one’s viewpoint, Planned Parenthood is either the embodiment of evil or the champion of reproductive rights. It is anything but objective, unbiased or uncontroversial. It certainly should not be accorded the preferred status and free advertising space the Framework currently gives it.

For higher grades, Planned Parenthood is joined by another polarizing organization, the American Civil Liberties Union (ACLU). This is at Chapter 6, page 61, lines 1430-1440, which reads as follows:

Partnering with your community: Students identify local resources for reproductive and sexual health and evaluate laws related to sexual involvement with minors by inviting the local American Civil Liberties Union chapter, local Planned Parenthood, CDPH, CDE, or other verified medically accurate organizations to provide a professional development presentation on the California Healthy Youth Act for teachers, administrators, school board members, and parents, guardians, and caretakers. Using valid and reliable Web resources, students create a local resource guide of medical, health, and clinical providers, including those who provide services to the LGBTQ+ population, for reproductive and sexual health services that includes how to locate accurate sources of information on reproductive health in their community (9–12.1.9.G, Essential Concepts; 9–12.3.2.G, 9–12.3.4.G, Accessing Valid Information).

For most of the last century, the ACLU has been the fiercest legal advocate for a progressive agenda. Promotion of the ACLU is particularly concerning to people of faith, because the ACLU has singled out for attack in its Establishment Clause litigation displays acknowledging or honoring our nation’s religious heritage. *See, e.g., ACLU of Allegheny County v. Allegheny County*, 492U.S. 573 (1989); *McCreary County v. ACLU of Ky.*, 545 U.S. 844 (2005).

Like Planned Parenthood, the ACLU also regularly takes partisan positions on controversial measures pending in the California Legislature. It would be highly inappropriate for the Framework to promote the very one-sided views of the ACLU.

“Spiritual abuse”

The Framework further takes the untenable approach of diluting the serious issue of abuse and injecting an unorthodox concept of spirituality into the mix that will confuse and mislead students.

The concept of “spiritual abuse” appears to be first raised at Chapter 5, page 37, lines 957-959 (chart of forms of abuse). Chapter 5, pg. 40, lines 1016-1031 then states:

Ms. L writes the six forms of abuse (physical, emotional, sexual, financial, spiritual, and technological) on the whiteboard. After the six forms of abuse are identified, students break into small groups and are assigned one form of abuse per group. In the small groups, students discuss their assigned form of abuse and write down examples they have seen or heard. Ms. L walks around the room to check in with each group. The group assigned to discuss spiritual abuse expresses having difficulty coming up with examples. Ms. L explains that spiritual abuse can include abuse related to religion, culture, or an individual’s sense of self. A student asks how someone can abuse another person’s sense of self, and Ms. L explains that a person’s sense of self could include how they feel about themselves, the language or languages they are most comfortable speaking, and

also things they enjoy doing, such as listening to music, playing sports, painting, or spending time with friends. If someone doesn't allow their partner to do things they enjoy and that build their sense of self, the relationship is unhealthy and can be considered abusive in some cases. A student asks, "So, it can be spiritual abuse if my girlfriend doesn't let me hang out with my friends?" Ms. L nods her head in agreement and allows the group to continue brainstorming ideas.

The Framework section on abuse continues at Chapter 5, page 41, lines 1052-1056 with examples:

Examples for spiritual abuse include using religion to justify abuse, insisting on rigid gender roles, forcing boyfriend/girlfriend/partner(s) to do things against their beliefs, mocking beliefs or cultural practices, mocking or banning the language or dialect they speak, not allowing boyfriend/girlfriend/partner(s) to do things they enjoy or to better themselves, including interfering with their education.
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Chapter 6 (Grades 9-12), pg. 40, line 1008 also includes "spiritual abuse" examples:

Spiritual	Using religion to justify abuse, forcing others to adhere to rigid gender roles, forcing partner to do things against their beliefs, mocking beliefs or cultural practices, not allowing partner to do things they enjoy or to better themselves, including interfering with their education
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The Framework's awkward foray into spirituality is so unscientific and unrecognizable to most people of faith that it is difficult to ascertain where the information originates. This will strike many families as a gross misunderstanding and even denigration of their spiritual beliefs and experiences. For one thing, it paints spirituality in a negative light. Just as concerning, by diluting the concept of abuse into six different areas, some of which are abhorrent and criminal (like sexual and physical abuse), and others of which are extremely vague and open to question (like some of the examples of spiritual abuse), the Framework does a disservice both to people of faith and to real victims. This also does a disservice to teachers, as mandatory reporters who have the responsibility to report abuse. The Framework lumps together types of "abuse" that are not equally reportable, creating a likelihood that families will find themselves under investigation for beliefs or actions that are entirely legal.

The State's clumsy attempts here to wade into the deep waters of religions and spirituality call to mind the Supreme Court's warnings of many years ago:

If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein. *W. Va. State Bd. v. Barnette*, 319 U.S. 624, 642 (1943).

How-to demonstration of condoms

Many parents will also be appalled to see that the Framework's approach to sex education now includes the following "Barrier Method Demonstration" at Chapter 5, page 31, lines 855-864:

Barrier Method Demonstration

A condom (internal/female and external/male condom) and dental dam demonstration is provided. After the demonstration, students individually practice the step-by-step process on a penis model or their fingers. Alternatively, students can place the steps, displayed on cards, in the correct order and show examples of internal/female and external/male. For teaching methods, health education teachers should reference current medically-accurate instructional resources online and show examples of male and female condoms and dental dams. In addition to skill demonstration, students also apply a decision-making model to evaluate the value of using condoms for STI and pregnancy prevention.

Condom demonstrations have not been a typical part of sex education in much of the state. What may be considered normal in San Francisco might come as an unwelcome surprise to parents in Placerville who assume their children will learn the basics of "the birds and the bees," not how to put condoms on penis models. This aspect of the Frameworks is unnecessary to achieve any statutory mandate and is ill-conceived in light of the religiously and culturally diverse population of our state. This approach is not consistent with the legislative intent set forth in the sex education statutes, Sections 51933-51939. Specifically, Section 51937 provides:

It is the intent of the Legislature to encourage pupils to communicate with their parents or guardians about human sexuality and HIV and to respect the rights of parents or guardians to supervise their children's education on these subjects. The Legislature intends to create a streamlined process to make it easier for parents and guardians to review materials and evaluation tools related to comprehensive sexual health education and HIV prevention education, and, if they wish, to excuse their children from participation in all or part of that instruction or evaluation. The Legislature recognizes that while parents and guardians overwhelmingly support medically accurate, comprehensive sex education, parents and guardians have the ultimate responsibility for imparting values regarding human sexuality to their children.

CONCLUSION

Health education is too important to be politicized or ideologically driven at the behest of special interest groups. Adoption of the Framework as-is will lead more parents to conclude that the

State does not respect their religious values. The most likely result is a further exodus from the public school system, and opt-outs from health instruction. The Framework can and must be revised to be more inclusive of the many families with traditional and religious values.

The Health Education Curriculum Framework appears to be circumventing the Legislature's intent that the State set broad minimum standards, but local decisions reflect local values. To this end, Education Code 60000 provides:

- (a) It is the intent and purpose of the Legislature in enacting this part to provide for the adoption and selection of quality instructional materials for use in the elementary and secondary schools.
- (b) The Legislature hereby recognizes that, because of the common needs and interests of the citizens of this state and the nation, there is a need to establish broad minimum standards and general educational guidelines for the selection of instructional materials for the public schools, but that because of economic, geographic, physical, political, educational, and social diversity, specific choices about instructional materials need to be made at the local level.
- (c) The Legislature further recognizes that the governing boards of school districts have the responsibility to establish courses of study and that they must have the ability to choose instructional materials that are appropriate to their courses of study.

We urge the Board to make substantial revisions, in accordance with the concerns outlined above, that will return decision-making to the local level where it can be more reflective of parental and community values.

Respectfully submitted,



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