

New Law Applies the California Healthy Youth Act to Charter Schools Beginning in the 2019-2020 School Year

On September 18, 2018, Governor Jerry Brown signed AB-2601 into law applying the California Healthy Youth Act (“CHYA”) to charter schools at the commencement of the 2019-2020 school year. The CHYA, found in Education Code Section 51930, requires California charter schools to teach sexual education and human immunodeficiency virus (“HIV”) prevention to students in grades 7 to 12 at least once in junior high or middle school and at least once in high school.

The CHYA does not require instruction to be delivered by a teacher with a specific credential. Rather, the CHYA requires that the instruction be taught by “instructors trained in the appropriate courses,” which is defined as “instructors with knowledge of the most recent medically accurate research on human sexuality, healthy relationships, pregnancy, and HIV and other sexually transmitted infections.” Outside consultants or guest speakers can be used to deliver comprehensive sexual health education and HIV prevention education or to provide training for the school staff.

The stated purposes of the CHYA are (1) to provide pupils with the knowledge and skills necessary to protect their sexual and reproductive health from HIV and other sexually transmitted infections and from unintended pregnancy; (2) to provide pupils 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; (3) to promote understanding of sexuality as a normal part of human development; (4) to ensure pupils receive integrated, comprehensive, accurate, and unbiased sexual health and HIV prevention instruction and provide educators with clear tools and guidance to accomplish that end; and (5) to provide pupils with the knowledge and skills necessary to have healthy, positive, and safe relationships and behaviors.

All instruction under the CHYA must satisfy the following minimum criteria:

- ✓ Instruction and materials shall be age appropriate.
- ✓ All factual information presented shall be medically accurate and objective.
- ✓ All instruction and materials shall:
 - align with and support the purposes of the CHYA (see above for listed purposes) and not conflict with them;
 - be appropriate for use with pupils of all races, genders, sexual orientations, and ethnic and cultural backgrounds, pupils with disabilities, and English learners;
 - be made available on an equal basis to a pupil who is an English learner;
 - be accessible to pupils with disabilities, including, but not limited to, the provision of a modified curriculum, materials and instruction in alternative formats, and auxiliary aids;

- not reflect or promote bias against any person on the basis of any protected characteristic (i.e. disability, gender, gender identify, gender expression, nationality, race, ethnicity, religion, sexual orientation, immigration status);
- 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;
- teach pupils about gender, gender expression, gender identity, and explore the harm of negative gender stereotypes;
- encourage a pupil to communicate with his or her parents, guardians, and other trusted adults about human sexuality and provide the knowledge and skills necessary to do so;
- teach the value of and prepare pupils to have and maintain committed relationships such as marriage;
- provide pupils with knowledge and skills they need to form healthy relationships that are based on mutual respect and affection, and are free from violence, coercion, and intimidation;
- provide pupils with knowledge and skills for making and implementing healthy decisions about sexuality, including negotiation and refusal skills to assist pupils in overcoming peer pressure and using effective decision-making skills to avoid high-risk activities;
- not teach or promote religious doctrine.

At a minimum, instruction under the CHYA must include the following:

- ✓ Information on the nature of HIV, as well as other sexually transmitted infections, and their effects on the human body.
- ✓ 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 activities and injection drug use.
- ✓ Information that abstinence from sexual activity and injection drug use is the only certain way to prevent HIV and other sexually transmitted infections and abstinence from sexual intercourse is the only certain way to prevent unintended pregnancy. This 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.
- ✓ 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 federal Centers for Disease Control and Prevention.
- ✓ 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.
- ✓ 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.

- ✓ 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 the only way to know if one is HIV-positive is to get tested.
- ✓ Information about local resources, how to access local resources, and pupils' 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.
- ✓ Information about the effectiveness and safety of all 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, all of the following:
 - Parenting, adoption, and abortion.
 - Information on the law on surrendering physical custody of a minor child 72 hours of age or younger.
 - The importance of prenatal care.
- ✓ Information about sexual harassment, sexual assault, sexual abuse, and human trafficking. Information on human trafficking shall include information on the prevalence, nature, and strategies to reduce the risk of human trafficking, techniques to set healthy boundaries, and how to safely seek assistance.
- ✓ Information about adolescent relationship abuse and intimate partner violence, including the early warning signs thereof.

Should you have any questions about this Legal Alert or the California Healthy Youth Act, please contact Lisa Corr at lcarr@mycharterlaw.com or 916.646.1400. You can also view past Legal Alerts at <http://mycharterlaw.com/legal-alerts/>.

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