

WHAT DOES THE LAW SAY ABOUT PARENT/GUARDIAN NOTIFICATION AND CONSENT FOR INSTRUCTION?

Parents or guardians must be notified by the school or district at the beginning of the school year (or at the time of enrollment) about planned comprehensive sexual health and HIV prevention education, and must be given an opportunity to review materials. The school district must also inform parents/guardians about whether the instruction will be provided by district personnel or outside consultants. If instruction will be provided by outside consultants, the notice must include the name and organizational affiliation of the outside consultant and the date of the instruction. The notice must also inform parents/guardians of their right to request copies of Education Code §§ 51933, 51934, and 51938. If arrangements for guest speakers or outside consultants are made after the initial notification is sent out at the beginning of the year, districts must notify parents at least 14 days prior to the instruction via mail or another commonly used method.

The law allows parents or guardians to remove their child from comprehensive sexual health and HIV prevention education, as defined in the statute (EC §§51931(b), (d), 51932.), using a passive consent or “opt-out” process. Schools may not require active consent (“opt-in”) for participation in comprehensive sexual health and HIV prevention education in any grade, including elementary school. (EC § 51938(a).) The notice sent to parents/guardians informing them about planned instruction must additionally inform them that they may remove their child from the instruction and that in order to do so they must state their request in writing to the school district. (EC § 51938(b)(4).) If the parent/guardian does not request in writing that the child be withheld, the child will attend the instruction. Schools may not require parents/guardians to return a signed acknowledgment that they have received the notice in order for their child to participate in the instruction; this serves as de facto active consent and is prohibited under the law.

In order to facilitate the collection of data needed by researchers to evaluate the effectiveness of comprehensive sexual health education and other unintended pregnancy prevention efforts, the law permits schools to administer anonymous, voluntary, confidential, age-appropriate surveys or questionnaires in which students are asked about their sexual activities and attitudes in order to measure their health behaviors and risks. Parents/guardian must be notified of any planned surveys or questionnaires, be given the opportunity to review these surveys or questionnaires and, in grades 7-12, be given the opportunity to request in writing that their child not participate. Schools may not adopt an active consent or “opt-in” policy for these surveys or questionnaires for students in grades 7 to 12. Prior to grade 7, parents must give active consent in order for their child to participate. (EC§ 51938(c).)