



FAMILIES HAVE A RIGHT TO OPT THEIR CHILD OUT OF INSTRUCTION TO WHICH THEY ARE CONSCIENTIOUSLY OPPOSED

The California Supreme Court recognizes a family’s right to opt their child out of instruction to which they are conscientiously opposed, from religious convictions or otherwise. *Hardwick v. Board of School Trustees of Fruitridge School Dist.*, Sacramento County (1921) 54 Cal.App. 696, 704. In that case, parents objected to their children’s participation in the public school’s mandatory dance classes because it violated their religious beliefs. The parents proposed alternative ways to satisfy the state’s physical-exercise requirements, which the principal refused to consider. The children were expelled from the school for their absence from the class, and their parents sued. The Supreme Court of California ultimately ruled in favor of the parents, stating that **as long as the parents’ requests “relate to matters in rearing and education of their children,” are “not offensive to the moral well-being of the children,” and are not “inconsistent with the best interests of society,” the public school must accommodate.**

To rule otherwise, the Supreme Court of California asserted, would be to **subvert “the home life so essential to the safety and security of society and the government which regulates it—the very opposite effect of what the public school system is designed to accomplish.”**

School districts must respect that children who attend school are not *their* children—they are *their parents’* children. It is not a school district’s job to instill in children any particular ideology or worldview (in fact, that is prohibited by law), and parents’ opt out requests relating to matters in rearing and education that are not offensive to the moral well-being of the children must be accommodated by a public school.

Under *Hardwick*, children of persons conscientiously opposed to certain instruction, from religious convictions or otherwise, cannot be compelled, on pain of expulsion from school and of the denial of the right to attend any public school of the county, to participate in such instruction.

CSBA’s Proposed Policy Prohibiting Opt Outs Misrepresents State Law

The California School Board Association (“CSBA”) recently revised their sample Administrative Regulation (“AR”) 6142.8 to explicitly prohibit opt outs of certain subjects.

Under the section entitled “Students Excused from Health Instruction,” CSBA added: “[h]owever, pursuant to Education Code section 51932, such parental request shall not excuse a student from instruction, materials, presentations, or programming that discuss gender, gender identity, gender expression, sexual orientation, discrimination, harassment, bullying, intimidation, relationships, or family and do not discuss human reproductive organs and their functions. (Education Code section 51938).”

CSBA has taken the position that parents cannot opt out of instruction, materials, presentations, or programming that discuss gender, gender identity, and gender expression under Education Code section 51932, but that is not what Education Code section 51932 says.

Education Code section 51932 provides, in its entirety:

“(a) This chapter does not apply to description or illustration of human reproductive organs that may appear in a textbook, adopted pursuant to law, if the textbook does not include other elements of comprehensive sexual health education or HIV prevention education as defined in Section 51931.

(b) This chapter does not apply to instruction, materials, presentations, or programming that discuss gender, gender identity, gender expression, sexual orientation, discrimination, harassment, bullying, intimidation, relationships, or family and do not discuss human reproductive organs and their functions.” (emphasis added).

“This chapter” refers to Chapter 5.6 of Part 28, Division 4, Title 2 of the Education Code, which encompasses the entirety of the California Healthy Youth Act, codified at Education Code sections 51930 – 51939 (“CHYA”).

Contrary to CSBA’s interpretation, Section 51932(b) **does not say** parents cannot opt out of instruction, materials, presentations, or programming that discuss gender, gender identity, or gender expression. Nor does Section 51932(b) **prohibit** districts from notifying parents when such instruction, materials, presentations or programming is occurring.

Section 51933(d)(6) of CHYA requires instruction and materials to teach about gender, providing:

“All comprehensive sexual health education and HIV prevention education pursuant to Section 51934, whether taught or supplemented by school district personnel or by outside consultants or guest speakers pursuant to Section 51936, shall satisfy all of the following criteria:...

Instruction and materials shall teach pupils about gender, gender expression, gender identity, and explore the harm of negative gender stereotypes.”

Section 51939(a) mandates that districts honor parental opt out of CHYA material, stating:

“A pupil may not attend any class in comprehensive sexual health education or HIV prevention education, or participate in any anonymous, voluntary, and confidential test, questionnaire, or survey on pupil health behaviors and risks, if the school has received a written request from the pupil's parent or guardian excusing the pupil from participation.”

None of these sections prohibit notification or opt outs of gender instruction, materials, presentations, or programming.

CHYA Requires Districts To Notify And Respect Parental Opt Out For Certain Instruction In Health, But Does Not Require Districts To Notify And Respect Parental Opt Out For Certain Gender Topics.

CHYA mandates districts notify and respect parental opt out for certain instruction in health, but does not require districts to notify and respect parental opt out for certain gender topics. However, this should not be construed to mean a district is **prohibited** from notifying parents and allowing opt outs of instruction, materials, presentations, or programming that discuss gender, gender identity, or gender expression. Districts are simply **not required** to do so.

Some cite the Fair Education Act (SB 48, Chapter 81, Statutes of 2011) (“SB 48”) in support of the assertion that schools **must** teach gender ideology and that a district cannot notify parents or permit opt outs. This is also false.

SB 48 amended Sections 51204.5, 51500, 51501, 60040, and 60044 of the Education Code. None of these code sections prohibit districts from notifying parents about instruction, materials, presentations, or programming that discuss gender, gender identity, or gender expression. None of these code sections prohibit a district from allowing parents to opt out of instruction, materials, presentations, or programming that discuss gender, gender identity, or gender expression.

Accordingly, school districts **may** notify parents of such instruction, and **may** allow opt out and replacement with an educational activity.

Teaching about the existence of gender diverse people and encouraging tolerance is increasingly commonplace in society. However, some teaching crosses the line into dogmatic instruction that children can be “born in the wrong body,” can transition into the opposite gender, and that once a person “transitions” they become the opposite gender and must be identified as such. Upon receiving this instruction, children are often encouraged to adopt new identities and alter their bodies with hormonal treatments, physical devices like binders and packers, and ultimately surgical

intervention without parental knowledge or consent. Teaching gender ideology as fact is controversial and carries risk of significant harm, including sterility, necrosis, and death, as evidenced in recent research including the Cass Review (available at <https://cass.independent-review.uk/home/publications/final-report/>) and the WPATH files available at (<https://environmentalprogress.org/big-news/wpath-files>).

Recommendation:

Therefore, if your district wants to adopt CSBA's new AR 6142.8, our recommendation is to reject ALL of CSBA's proposed new "Students Excused from Health Instruction" and leave that section the way it was.

Removing CSBA's legally incorrect language does not mandate any particular kind of opt out. It simply leaves the door open for parents who are conscientiously opposed to any particular subject to notify the school and opt their child out from that particular instruction.

If a board majority wishes to restrict parental opt out rights by adding an opt out prohibition to their policy, they may do so, but they run the risk of litigation from parents who object on moral, religious, or other grounds. Prohibiting opt outs when not required to do so under California law means a school board is going above and beyond the law to limit parental rights and choice, and impinging on religious liberty.

Note, no school district is required to adopt CSBA policies. They are merely recommendations often infused with politically biased and legally incorrect language.