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# Do Mother and Father Know Best?: California's Policies on Parental Consent for Sex Education

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# **Do Mother and Father Know Best? California's Policies on Parental Consent for Sex Education**

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## **Preface**

This thesis melds the disciplines of public policy analysis and anthropology to investigate questions surrounding parental consent policies for sex education in California public schools. My view is that all elements of the policy process are expressions of culture. From agenda setting through implementation, policies express much about how people believe the world should work, and this is greatly informed by cultural context. If culture is defined as a continual process of meaning making, then the way that authority is attached to policy merits extra scrutiny in examining cultural discourse.

Additionally, as an anthropologist I feel that it is my scholarly duty to discuss my positionality on the topic of sex education before I present my thesis. As a young person, a progressive, an agnostic, a feminist, and product of higher education, I feel strongly that access to age appropriate, medically accurate, comprehensive sex education is an important right. I believe that policy should be evidence-based and outcome focused—but I also acknowledge that my own strong feelings on the issue of sex education have the potential to create bias.

## Chapter 1: Introduction

“There’s an old saying that there are only two things for certain in this world; death and taxes. A third certainly might be added: disagreement about sex education” (Zimmerman 2015, 7).

—American school board member, 1968

During my first high school sex education presentation as an intern for Ironwood Community Health Center,<sup>1</sup> I noticed a peculiar occurrence in the classroom. I had arrived quite early with two colleagues to set up the room and test our PowerPoint presentation. Bursts of arid Southern California fall air punctuated the classroom as backpack-clad students filed in and found their seats, and typical high school banter filled up the room as they moved into it. The bell rang to signal the start of class, and their health teacher, a middle-aged man in casual clothes, stood up from his desk to introduce our organization and the presentation we were to give. He then said, “And I’ll collect your permission forms now.” As the majority of the students reached into folders and unzipped backpacks to fetch their forms, a handful came forward to confess that they had not returned the form. He gave these students what appeared to be a crossword puzzle, and they left the room for the duration of the class, banished to the library while the rest of the students participated in our presentation.

I didn’t realize it at the time, but I had just witnessed a classic example of a compliance gap with current California state policies regarding the provision of sex

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<sup>1</sup> Name changed

education. By requesting that students return a permission form signed by their parents, the teacher in this class had implemented an “opt-in” format for sex education. Under California law this is illegal—the only form of parental consent allowed for sex education in the state is “opt-out,” in which a parent submits a request (typically in writing) to the school requesting that their student not participate in the sex education component of the curriculum. The rationale behind opt-out forms of parental consent is they “permit parents to exclude their children from sex education classes for religious, moral, or family-oriented reasons” (Varley 2005, 536). Opt-in is typically considered to be the more restrictive variety of parental consent.

### *Road Map: Big Questions*

A cursory overview of the issue of parental consent for sex education in public schools does not do justice to the complex and contentious nature of the phenomenon. While the anecdote I have shared above is relatively simple, it reveals many deeper questions about sex education policies in California, and the way that parental consent policies tie into this. After providing additional historical, cultural, and policy background on sex education and parental consent in Chapter Two, this thesis will dive into three primary questions on this topic in Chapters Three through Five. These questions are:

- Why would a parent choose to opt their child out of sex education? (Chapter Three)

- Should parents be able to opt their child out? (Chapter Four)
- How does the implementation of parental consent policies actually happen in schools? (Chapter Five)

Chapter Six will conclude the thesis and provide policy recommendations.

### *Stakeholders*

With regard to practical significance, issues surrounding sex education touch a wide array of stakeholders on both individual and societal levels. Most centrally, the issue impacts students (who may or may not receive sex education) and their parents (who have a tremendous stake in the information to which their children are exposed). It is also of great importance to teachers, who potentially can find themselves in the cross-hairs of cultural wars about sex education, as well as school administrators in charge of tracking and implementing the latest state and local sex education policies. More broadly, sex education impacts the wellbeing of society as a whole by helping to facilitate better health outcomes for the entire population.

Perception of the direction of this impact hinges greatly upon normative preference, so it is important to ground assertions in data—we turn to this lens next.

### *Current State of Adolescent Sexual Health & Health Education in California*

What is the state of adolescent sexual health in California, and how does sex education fit into this? According to research done in 2015, over 60% of teens are sexually active at age 18 in the state (AB 329, 2015). The rate of STI contraction is



growing in California, and young people ages 15-24 are at the highest risk (AB 329, 2015). Additionally, in California over 80% of teen births are unintended (AB 329, 2015). If sex education is already relatively widespread in the state, why are these outcomes not better? Nationally, most American students receive some type of sex education by the time they graduate from high school, but only 5-10% receive “high-quality comprehensive sex education” (Constantine, Jerman, Huang 2007). To illustrate this point, a national survey found that while 89% of high school students receive sex education at least once in school, only 68% receive instruction on how to properly use a condom (Constantine, Jerman, Huang 2007). Gaps like these are significant, and demonstrate that progress still stands to be made.

In order to understand what is at stake if students do not have access to sex education, it is important to understand the distinction between properly and improperly implemented sex education. In its comprehensive and properly implemented form, sex education (including HIV/AIDS prevention education), “has been shown to be effective in both delaying sexual activity and increasing condom and contraceptive use among youth who are already sexually active.” Research also shows that health education can improve students’ academic outcomes, “including in reading and math” (AB 329, 2015).<sup>2</sup> While this research is encouraging, the

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<sup>2</sup> There is substantial research that backs up the linkage between health education and increased academic success. An “extensive review” of school-based health initiatives (including comprehensive sex education) conducted by the Washington State Board of Health found a self-reinforcing relationship between student health and academic outcomes: “For students, unhealthy behaviors and educational challenges may influence each other, or have common root causes” (Dilley 2009, 1).

reality is often far from this shiny ideal. Sex education in American schools is often “...minimal and fragmented, with essential topics often omitted or inaccurately presented, especially those related to methods of contraception and STD protection for sexually active youth” (Constantine, Jerman, Huang 2007). This discrepancy leads to some confusion regarding the actual effectiveness of sex education.

Despite having a reputation for being a source of controversy in education, public support for sex education is very high—over the past 20 years, parental support for sex education has been consistently around 80% nation wide (Varley 2005, 533). Additionally, the majority of mainstream education, health, and medical associations have “formally endorsed” school-based comprehensive sex education, including the Society for Adolescent Medicine, the American Medical Association, the National Association of School Nurses, and American Psychological Association, and the American School Health Association (Constantine, Jerman, Huang 2007). Of course, despite general support for these programs, there has been sustained controversy over the content of the courses (Varley 2005, 533).

While facts and figures regarding the state of sexual health among California’s youth present one picture of the issues, this question of sexual health and education also implicates much more deeply held values, beliefs, and cultural norms regarding intersections of health and education policy. Matters of sex and sexuality can be very controversial topics, particularly when combined with discussions of conflicts between parental rights and children’s rights. There is also broader tension between the idea of schools being able to “map appropriate sexual

behavior” and schools “liberating individuals to explore the bounds of appropriate sexual behavior on their own” (Zimmerman 2015, 146). These issues highlight how different cultural expectations can clash in the public school system.<sup>3</sup>

Questions about access to sex education also consider where to place the outer limits of individual rights in the face of communal interests imposed by the state, which is especially challenging in multicultural environments such as public schools, where students of vastly different backgrounds are channeled into one environment. In addition, debates over the appropriateness of having sex education in schools relates to the ideals of individuality and rational action that are inculcated by schools: this is one of the “most hotly contested questions of modernity” (Zimmerman 2015, 146) and ties into deep and contentious issues about individual freedom and common responsibilities at the heart of many policy debates.

*Methods:*

One advantage of investigating these questions from an interdisciplinary lens was that it allowed me to utilize a broad array of methods. My training in public policy analysis allowed me to examine the current research literature with a keen eye for implementation challenges and institutional practices surrounding the dissemination of this information. I sought out data specific to California where

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<sup>3</sup> Zimmerman refers to these conflicts as “Clashes of multiculturalism and multisexuality” (133)

possible, but filled in with studies representing the nation as a whole where there was not data for California specifically.

Applying an anthropological approach to policy surrounding sex education opened up a variety of more person-centered methods for gathering primary data. These included participant observation during my time as a sex educator in five different Southern California high schools and a variety of open-ended interviews with teachers and administrators at these schools.<sup>4</sup> I had hoped to conduct interviews with parents as well, but due to privacy rules I was not able to access this population. To make up for this lack of parent perspective in my interview base, I observed two Facebook pages for parents who are concerned with issues such as religious freedom and information privacy in the public school system. I received Institutional Review Board approval from Scripps to conduct my research, and I followed protocols to obtain informed consent with each of my informants.

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<sup>4</sup> I recognize that given my relatively small sample size of both schools and interview subjects, my data is limited in the sense that it shouldn't necessarily be generalized to the whole area or state.

## **Chapter 2: Sex Education in Context: Global History, California State Policies, & Cross-Cultural Comparison**

### **Sex Education: A Historical Overview**

In order to understand the current status of sex education in American public schools, it is necessary to understand some of the history behind the rise of public schools and how sex education curricula became a part of the mission to educate America's young people. Zimmerman (2015) locates the beginning of this question in the 1900's, during which a "dramatic explosion of state-run schools" became ubiquitous both in the West and across the world (Zimmerman 2015, 1). As the century progressed, school became increasingly central to the experience of being a young American: between 1950 and 1970 alone, the percentage of children attending primary school rose from 58 to 83%.

By 1985, 90% of children across the world had spent "at least some part of their lives at school" (Zimmerman 2015, 1). During this same time span, a huge societal shift in sexual behaviors, expectations, and mores took place, and for this reason "nation-states looked to their burgeoning education systems to describe, explain, and especially control sex" (Zimmerman 2015, 2). Thus, sex education is not an innate feature of the educational system, but ended up as a component of it because of a confluence of historical trends and larger societal goals and the rise of the educational system.

Major global events during the 20<sup>th</sup> century also had a hand in shaping sex education in the US and abroad. For example, after World War II, American sex education was “refashioned” as “family life education,” and put emphasis on gender roles and correct child rearing (Zimmerman 2015, 3). By 1970, almost every Western country had instituted some type of sex education, and most nations in the world followed suit during the HIV/AIDS crisis of the 1980’s and 90’s (Zimmerman 2015, 5). Coinciding with the rise of AIDS was a proliferation of technologies that made sexual imagery more immediate and accessible for children, which led to a heightened parental concern about sexual matters, and widened the divide between parents who viewed sex education as the solution and those who viewed it as part of the problem (Zimmerman 2015, 133). As the rate of globalization increased throughout the 1900’s, the more sex education came under attack as a result of claims of foreign intrusion upon national values—particularly as an increase in immigration led to value clashes in public schools (Zimmerman 2015, 10). All of these events contributed to shaping modern-day sex education, and the debates surrounding it.

### *Why Is Sex Education in Schools?: Contemporary Arguments*

Part of the sustained controversy over sex education is the question of whether or not schools are the appropriate location for this type of instruction. Why have sex education in schools at all? De-naturalizing this linkage is an important first step in building a compelling case either for *or* against sex education, as many

parents who fall on either side of the issue do. Kirby (2002) argues that schools are a logical locus for the dissemination of information on sexual health for several reasons. For one, most children are enrolled in school for many years before they become sexually active, and schools have the special status of being among the only institutions in society that are regularly attended by young people (Kirby 2002, 27). Additionally, Kirby points to the fact that many students are enrolled in school when they first become sexually active (Kirby 2002, 25). Thus, contemporary arguments for having sex education included in school curricula include the timing and primacy of school in the lives of young people, and the unique institutional positioning of schools.

### **Sex Education Across Cultures:**

Much global variation exists in sex education across cultures in both style and content, and this hinges in large part on how different cultures view sex. Scholars often cite “more progressive attitudes towards sex and sexuality education in Europe” (Auteri 2015).<sup>5</sup> This is epitomized perhaps by Sweden, which was the first country to require sex education (in 1921) and is known for its extremely progressive stances on sexuality education (Zimmerman 2015, 4). In Sweden,

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<sup>5</sup> Societal attitudes towards sex in Europe do appear to play a large role in setting the stage for desired health outcomes. For example, studies of European teenagers have shown much less shame about contraception as compared to American teenagers, and more of a feeling that not using contraception is irresponsible (Auteri 2015).

students typically begin receiving sex education in kindergarten, and the curriculum builds in a cumulative fashion throughout a student's education (Boetheus 1985).

Swedes have a holistic view of sexual and reproductive health, seeing it as “a matter of democracy, equity, equality, and sustainable economic development—not health only” (Kelefang 2008, 7). This holistic approach is typical of Scandinavian countries, which are known for their ability to effectively combine formal and informal sexual health education (such as parents talking to their children about these matters at home from a young age), resulting in the lowest rates of teen pregnancy in Western Europe (Walker 2004).

However, Europe's sex education and relatively permissive attitudes towards teenage sexuality are definitely outstanding in the global context. As Patti Britton (former president of the American Association of Sexuality Educators, Counselors, and Therapists) describes, “In very few parts of the world is comprehensive sexuality education the norm” (Auteri 2015). In Hong Kong in the year 2001 the average high school age student received 2 hours of sex education per year, and in Chile, half of students received sex education no more than two times per year (Zimmerman 2015, 5). In addition to the number of hours devoted to the subject being highly variable, the types of programs vary significantly as well. Due to the fact that many countries are extremely uncomfortable with the idea of teenagers having sex, there is a proliferation of “abstinence until marriage” programs, in addition to the subject often being entirely neglected in schools (Auteri 2015). In all, a cross-cultural analysis of sex education programs reveals a dizzying array of



priorities, options, and program types. An awareness of the cultural variation of these programs helps to frame the context of California's policies on sex education, which is discussed next.

### **Sex Education in California: A Policy Chronology**

A handful of transformative pieces of legislation over the past 20 years dramatically altered the landscape of sex education policy in California. In 2003, the California State Senate passed the California Comprehensive Sexual Health and HIV/AIDS Prevention Education Act (SB 71), which permitted, but did not require the teaching of sex education. The bill

*"...authorized school districts to provide comprehensive sexual education, consisting of age-appropriate instruction, in any of kindergarten and grades 1-12, inclusive, and requires school districts to ensure that all pupils in grades 7 to 12, inclusive, receive HIV/ AIDS prevention education, as specified."* (AB 329, 2015). (Emphasis added)

Prior to this sweeping reform, sex education policy in California had been made up of a patchwork of "confusing and contradictory" topic-specific amendments (Combellick & Brindis 2011, 1). Given this patchwork, it is unsurprising that research prior to the 2003 passage of SB 71 showed that many schools were not in compliance with Education Codes on sex education: 48% of schools failed to cover required topics in the curriculum, 58% had no training requirement for HIV/AIDS prevention instructors, and 39% had improper parental notification & consent policies in place (Combellick & Brindis 2011, 2). The language in this bill made it

clear that sex education was permitted, but the only component that was absolutely required was HIV/AIDS prevention education.

The next landmark piece of legislation on sex education policy in California was The California Healthy Youth Act (AB 329). Passed in 2015 and effective in 2016, AB 329 re-named the California Comprehensive Sexual Health and HIV/AIDS Prevention Education Act of 2003 the “California Healthy Youth Act,” and required that students in grades 7-12 receive both comprehensive sex education and HIV/AIDS prevention education at least once in middle school and once in high school (“ACLU Fast Facts” n.d.).<sup>6</sup> The goal of the bill was to make HIV/AIDS education and comprehensive sex education into a single “integrated” course of instruction (AB 329, 2015).<sup>7</sup>

Previously, the comprehensive sex education part had been permitted, but not mandated. AB 329 also stipulated that instruction must be age-appropriate and medically accurate, may not promote religious doctrine, and that abstinence-only programming is not permitted (“ACLU Fast Facts” n.d.). The text of the policy also explicitly addresses parental consent, stating that parents must be notified that their students will be receiving this information, and be allowed to view the materials

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<sup>6</sup> It is worth noting that the stipulation “at least once” is still vague in terms of quantifiable metrics such as class hours devoted to the subject. The bill does specify that sex education must be “comprehensive, medically accurate, and age appropriate” (“ACLU Fast Facts” n.d.)

<sup>7</sup> The distinction here is that SB 71 *permitted* the teaching of sex education, while AB 329 *mandated* it. (Of course being held accountable for actually disseminating that information in a faithful manner is another issue, which will be discussed in Chapter Five)

beforehand (“ACLU Fact Facts” n.d.). The policy allowed parental opt-out, but banned parental opt-in.<sup>8</sup>

*Figure 1: Overview of Major California Sex Education Policies*

Pre 2003	2003: SB 71	2015: AB 329
Sex education NOT standardized in California	<b>CA Comprehensive Sexual Health and HIV/AIDS Prevention Act</b> <ul style="list-style-type: none"> <li>• Sex education permitted, but not required</li> <li>• HIV/AIDS prevention education required</li> </ul>	<b>California Healthy Youth Act</b> <ul style="list-style-type: none"> <li>• Sex education AND HIV/AIDS prevention education BOTH required in integrated course</li> </ul>

<sup>8</sup> The exact wording in AB 329 is: “A parent or guardian of a pupil has the right to excuse their child from all or part of comprehensive sexual health education, HIV prevention education, and assessments related to that education through a passive consent (“opt-out”) process. A school district shall not require active parental consent (“opt-in”) for comprehensive sexual health education and HIV prevention education.” (AB 329, 2015)

## **Chapter 3: What factors influence parental views on sex education, including the decision to opt a child out of sex education provided at the high school level?**

After laying the fundamental historical, cross cultural, and political background on sex education in Chapters One and Two, Chapter Three progresses into a discussion of the first research question: What factors influence parental views on sex education, including the decision to opt a child out of sex education provided at the high school level? This chapter opens with a wide angle on the question of sex education at large to start instead of specifically looking at the opt-out function—as I discuss later in the paper, implementation issues in California complicate the discussion of opt-out, as some schools improperly substitute opt-in policies. In order for this section to be applicable to both frameworks as they play out “on the ground,” this chapter considers parental views on sex education in a broad sense first.

This chapter is divided into three sub-sections. The first two draw from scholarly research literature and lay broad groundwork for the question of what factors influence how parents view sex education. The first section takes the parent perspective and considers childhood as a culturally constructed life stage with certain endemic risks. The second section situates families in their contexts by looking at how cultural factors and the moral imperatives of groups influence parental views of sex education. The third section draws from primary research to

explore reasons for parental aversion to sex education that could result in students being opt-out.

### **Section One: Childhood and Risk Anxiety**

While many scholars have written about the idea of childhood as a societal construction specific to a particular time and location, Scott, Jackson, and Backett-Milburn (1998) are unique in their consideration of how risk ties into this construct. Scott et al. define childhood as a time period partly categorized by exclusion from full participation in the adult world, and explain that there is nothing innate or natural about this division (Scott et al. 1998, 691). On how risk ties into this construction, they note:

Childhood is seen as being at risk from pressures towards early maturity, conspicuous consumption, and precocious sexuality... Highlighting a fundamental contradiction in discourses around children and childhood: childhood is regarded as a natural state and yet also as perpetually at risk. (Scott et al. 1998, 694)

A critical examination of this life category is important in order to understand how parents understand their children and seek to control the experiences to which they are exposed, including sex education, which the authors cite as key example of a “boundary marker” that separates childhood from adulthood (Scott et al. 1998, 698). The definition of this category of childhood as a time necessitating increased protection and parental surveillance sets the stakes high, and we will next consider how Scott et al. conceptualize risk minimization.

Building on Scott et al.'s (1998) assertion that conceptualizations of childhood are contextually particular, the authors attempt to categorize the current moment in order to better understand how parents view their children and the risks to be managed in their upbringing. One of the key developments of late modernity, the authors argue, is the concept of risk minimization, as can be seen in many social institutions, from venture capital and the stock market to insurance and mass immunization campaigns (Scott et al. 1998, 689). In risk minimization terms, two competing conceptualizations of childhood result in parental tension between viewing children as “active, knowing, autonomous individuals on the one hand, and as passive, innocent dependents on the other” (Scott et al. 1998, 689). Applying these competing frameworks (as applications of the risk minimization project of modernity) to sex education in contemporary public schools allows us to understand some of the possible root impulses of parents in decisions regarding child participation.

Scott et al. apply this analysis to the particular risks endemic to children as they navigate and are exposed to sexuality. In this context of childhood being seen as a life phase during which individuals are particularly at risk, the relation of childhood and sexuality is particularly fraught with parental concern – adding to the big-picture understanding of why a parent would opt their child out. Scott et al. explain that:

Both public and parental anxieties accrete around the issue of early sexual maturity, which is seen as a particular threat to cherished ideals of childhood. Panic about teenage pregnancy rates and negative views of sex

education illustrate the common equation of childhood innocence with sexual ignorance (Scott et al. 1998, 698)

This “risk anxiety” around children and sexuality, borne from the impulse to protect children and (and the state of childhood itself), can result in a detrimental state of fear and dependency for children who are too sheltered from the harms their parents perceive. This foreshadows the importance of understanding what happens when children are opted out of sex education, discussed later in the paper.<sup>9</sup>

What, then, is the result of this hyper-focus on the risks of children having exposure to matters of sexuality, including potentially being enrolled in sex education classes in schools? Scott et al. (1998) argue that ultimately, the drive to protect children from harm can be self-defeating:

Risk anxiety, engendered by the desire to keep children safe, frequently has negative consequences for children themselves...In trying to combat sexual risk while safeguarding childhood ‘innocence,’ what is gained on the swings of protection may be lost on the roundabouts of confusion, vulnerability, and dependency” (Scott et al. 1998, 698.)

Thus, parents who wish to protect their children may inadvertently harm them by creating these negative outcomes. Beyond parental preoccupation with risk that could contribute to a parent’s decision to opt their child out of sex education, it is also worth noting that this discourse on risk is reflected in the curriculum of sex education itself. This panic about children being at risk is clearly embedded into the

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<sup>9</sup> It is worth noting that emphasis on risk minimization could potentially have the effect of parents encouraging a limited form of sex education focused on harm reduction rather than a holistic vision that includes potentially positive aspects of sex. This depends upon whether or not parents believe the common misconception that any discussion of sex will implicitly condone sexual experimentation.

curricula of sex education programs.<sup>10</sup> While it difficult to say exactly what the impact of this risk-oriented framing might be on how students come to view matters of sexuality, it is important to recognize how this framing of the discourse impacts both which students ultimately make it into the classroom, and the content of the curricula itself.

## **Section Two: Linkages Between Demographic Factors and Ideas About Sex and Sex Education**

The argument presented by Scott et al. regarding how parents might theoretically view the implicit category of childhood and the particular risks of sexuality set a wide foundation for discussion of sex education and the opt-out function specifically. Now the chapter will zoom out from the schemas of individual parents to consider how cultural factors and an emphasis on either “practical” or “absolutist” concerns might influence a parent’s view on sex education, including the decision to opt their child out of this programming.

Two frameworks put forth by scholars explain differences in how parents view sex education. Talbot (2008) opens with the observation that a surprising number of evangelical teenagers become pregnant each year, and she argues that

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<sup>10</sup> I experienced one particularly vivid example of this while accompanying an Ironwood Clinic co-worker to a sex education program at a local high school. We had extra time at the end of the class, so we screened a video called *The Teen Files: The Truth About Sex*. During the opening sequence of the video, it presents a variety of statistics about the risks associated with sex, then closes dramatically with the line, “Scared? You should be.”



this can be explained by examining the “cultural rift in America that mirrors the dominant political divide” between “red” and “blue” families.<sup>11</sup> On one side of this divide are social liberals, who are supportive of sex education and accept the idea of premarital sex, but “would regard a teen-age daughter’s pregnancy as devastating news.” On the other side are social conservatives, who advocate for abstinence-only sex education, are against premarital sex, but don’t object as much to teenage pregnancy, as long as it doesn’t result in abortion (Talbot 2008). This frame locates the root cause of differences in parental ideology regarding sex education along lines of political division, which correlate strongly with religiosity.<sup>12</sup> The article focuses mainly on how demographic factors (including class status and level of educational attainment) influence parental support for comprehensive or abstinence-based sex education—this grouping of parental views based on demographics is just one way of framing the question.

Constantine, Jerman, and Huang (2007) provide a similar framework to explain differences in parental views of sex education. They too primarily consider the debate between abstinence-only sex education versus comprehensive programs, but drawing upon surveys with California parents in particular, they locate the difference in parental preference in an emphasis on either “pragmatic” concerns or “absolutist” concerns instead of the divide occurring strictly between social liberals

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<sup>11</sup> Talbot draws the framework of “red” and “blue” families from Cahn and Carbone (2010)

<sup>12</sup> Talbot cites research by Mark Regnerus (2014) stating that while religiosity is a good indicator of views toward sexual matters, it is not necessarily a good indicator of sexual *behavior*.

and social conservatives.<sup>13</sup> The article defines “pragmatic” concerns regarding sex education as including the inevitability of adolescent engagement in sexual activity, the importance of providing complete information, and considering the consequences of actions taken by young people. The article defines “absolutist” concerns as religious or purity-based moral concerns. Among California parents included in the study, 64% of abstinence-only supporters cited absolutist concerns, while 94% of comprehensive sex education supporters cited pragmatic concerns (Constantine, Jerman, Huang 2007). In contrast to Talbot’s view, this study suggests that the gap between pragmatic and absolutist concerns may be more important in determining parental support for sex education than political differences.

### **Section Three: Primary Research on Parental Opt-Out**

While parents across California have extremely diverse views on sex education and it is difficult to generalize about opinions of such a vast and varied group, in my primary research on parent perspectives on sex education three main clusters of objections to sex education emerged: objections on the grounds of religious liberty, objections stemming from concerns that sex education constitutes government overreach, and a fear of children being inundated with

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<sup>13</sup> While there is overlap between these categories and the ones Talbot uses, they are not identical.

misinformation.<sup>14</sup> As I noted in the methods section in Chapter 1, accessing parents who had opted their children out of sex education directly as interview subjects was not feasible because of privacy rules that prevented teachers and administrators at schools from giving out parent information. To fill this gap in parental perspective, I researched Facebook parent forums, insights from my other informants on why parents opt-out, and materials posted online by the Pacific Justice Institute (PJI), which is a nonprofit organization headquartered in Sacramento that provides free legal counsel to people who feel their religious liberties have been violated. This amalgamation of sources is by no means comprehensive, but it does provide some insight into the reasons that parents might choose to opt their children out of sex education.

### *Religious Freedom*

Religious objections are one primary reason that parents object to sex education in public schools, resulting in opt-out. This echoes back to the assertion made by Constantine et al. that absolutist concerns play a major role in shaping a parent's opinion about sex education. Three out of the four administrators I talked to mentioned religious objections as a primary reason that students are opted out of sex education by their parents, and many of the teachers mentioned it as well. One teacher said, "We've had a handful of kids opted out for religious reasons over the

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<sup>14</sup> It is worth keeping in mind that the majority of parents *do* support sex education in public schools. This section is meant to tap into the perspective of the minority of parents who do not take this view.

last few years. I don't expect the kids who have parents who have objections for religious beliefs to participate." While there is not currently hard data breaking down reasons that parents opt their children out, this type of anecdotal evidence reveals that religion is at least at the forefront of the minds of people embedded in the world of education to whom I spoke.

On a broader scale, the existence of organizations like California's Pacific Justice Institute reveals that religious freedom is salient for a broader audience. Examining the messaging and content of their website helps to build a picture of concerns, values, and intent of parents who opt their children out of sex education because of religious concerns. Founded in 1997 by Brad Dacus, the organization provides legal representation to people who claim to have had their religious liberties violated.<sup>15</sup> The organization has many resources available online to help parents who are concerned about the intersections of religious freedom and public schooling. One of these items is an e-book called *Reclaim Your School: Ten Strategies to Practically and Legally Evangelize Your School*, which (according to the description on the website) "is an excellent resource for anyone who desires to understand the in's and out's of evangelizing in the public school system." The book, co-authored by Brad Dacus and his wife, aims not only to inform parents of their

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<sup>15</sup> My interpretation of the content of this website is that PJI advocates exclusively for the rights of Christians. Searching for the terms "Islam" and "Muslim" on the website yielded a total of two results, while searching the term "Christian" yielded 76 results.

rights, but also to actively encourage evangelizing within the California public school system.

Another online publication on the PJI website deals more directly with the issue of sex education. The document is called *Legally Asserting Religious Rights and Values in California Schools*, and contains a chapter called “Parents Can Opt Their Children Out of Comprehensive Sex Education and HIV/AIDS Prevention Education.” The section cites the portion of the California Education Code that stipulates that parents have the right to “ensure a school environment for their child that is safe and supportive of learning,” and then states that “Any activity that tends to isolate particular students, call students names, or tells students that religious beliefs are wrong, destroys any sense of a safe and welcoming school environment” (Dacus 2013, 27) Dacus uses the example of guest speakers or teachers discussing topics such as homosexuality, and being “intolerant of those students whose religious beliefs are incompatible with a homosexual lifestyle” (Dacus 2013, 27-28). It cites the use of “derogatory language” such as “homophobe” or “bigot” as having the effect of isolating students whose religious beliefs do not support homosexuality, thus (he argues) destroying the capability of these students to enjoy a safe and supportive learning environment.

How widely read these materials are among California parents who have concerns about their religious liberties in the face of a public school curricula is impossible to know, but they are revealing of some of the ways that people who are concerned with religion might think about the decision to opt a child out of sex

education. For one, it is interesting to note that the Pacific Justice Institute explicitly promotes evangelizing within the public school system to parents. Dacus does not at all operate under the assumption that church and state should be separated—in fact, he refers to this separation as “The Big Lie” (Dacus 2016, 18).<sup>16</sup> For parents operating under this framework, if the bar for being a successfully engaged Christian means making an active effort to push religion into schools, then the decision to opt out seems more like the bare minimum of what is expected. If parents also fear that a comprehensive sex education curriculum that addresses topics like homosexuality will lead to their children being singled out, discriminated against, or made to feel unsafe, the path to opt-out seems clear.

#### *General Aversion to Government Overreach*

Another set of issues that could lead a parent to opt their child out of sex education is concerns about sex education constituting government overreach into private family matters. This observation stems mainly from a public Facebook page called “Concerned Parents of California.” The page has about 500 likes, and its description reads “Concerned Parents of California protects state rights over education, local control of schools, parent rights and our right to privacy.” The page

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<sup>16</sup> After walking the reader through his argument against the idea of church and state being separated, Dacus writes, “At this point, some thoughts may be running through your mind, ‘Why know what the law is? If God wants me to share my faith with a student, teacher, or parent, shouldn’t I do so regardless of the law? After all, we are talking about eternal life here.’ ... In fact, you may be wondering if we are not, in fact, compromising the message of evangelism by exhorting you to know what the law is before you evangelize.” (Dacus 2016, 19)

isn't exclusively about sex education, but does link to materials that fit within the framework of parental concern about public school education. Articles posted to the page have headlines such as "1 Billion on Sex Ed—Is it Promoting Sex or Health?," "Idaho School Turmoil Over Sex Survey," and "Governor Brown Signs AB499 Allowing Shots Without Parental Consent." People who have liked the page engage in conversations in the comment sections of these articles, and it appears that the main functions of the page are to keep California parents abreast of news regarding perceived government over-reach into private family affairs, and to link them to resources (such as an opt-out form created by the PJI and listings of local parent groups).

The Concerned Parents of California Facebook page operates under the assumption that government intervention into family matters is pervasive, damaging, and requires that parents go onto the defensive in order to protect their children. This perspective informs understanding of another potential reason why parents opt their children out of sex education beyond the explicitly religious objections—if sex is considered a private family matter, then government attempts to control or regulate the way that knowledge of this topic is transmitted to students constitutes an unacceptable overreach of authority that must be combated by measures such as opt-out.

### *Fear of Misinformation*

Another reason that parents might choose to opt their children out of sex education is a fear that students are exposed to misinformation in these programs, which puts them at risk. Brad Dacus spoke to this in a 2015 interview with the San Francisco Chronicle following the passage of the California Healthy Youth Act. He said that the section of the act requiring districts to provide information on how HIV-positive individuals can receive life-extending treatments offers a “positive spin” on AIDs, and that

At no time should political agendas shortchange a straightforward and truthful education. The controversial provisions, without question, make this legislation a huge mistake for the health and safety and balanced truth that is needed for students in our public schools (Tucker 2015).<sup>17</sup>

Of course, the term “misinformation” is used in a relative sense here; perhaps a better designation would be “fear of children being exposed to information that is not in alignment with the worldview of their parents and communities.” It is hard to see Dacus’s comments as anything but the crudest of interpretations of the reality of what HIV prevention education entails. This is not to say that a parent opting their children out of sex education because the ideas presented in these programs contradict family or community values is an illegitimate reason—but to couch this reason in gross misrepresentation of the content of the programs certainly merits

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<sup>17</sup> Dacus’s claim that HIV/AIDs prevention education puts a “positive spin” on the disease fits into a larger trend of parental fear that exposure to sex education will encourage or implicitly condone sexual activity among young people. In reality, sex education has been shown to delay onset and frequency of sex education among young people, as well as increasing usage of condoms and contraceptives. (AB 329, 2015).



scrutiny. Regardless of whether parents are accurate in claiming that sex education misrepresents information presented to children or not, the reality is that some children are opted out because of the perception that they might be put at risk because of exposure to misinformation in sex education programming.

### *Conclusions: Parent Views on Sex Education*

This chapter considered a multitude of explicit and implicit factors that contribute to how parents view sex education. From culturally constructed notions of childhood as an at-risk state to demographic factors like education and religion to concern about pragmatic versus absolutist concerns, and due to concerns about state overreach into private family affairs, there are many ways of understanding how parent perspective on sex education is reified. These perspectives act as the guiding force that motivates some parents to opt children out of sex education, so it is important to understand how these opinions are shaped in addition to how they are expressed.

## Chapter 4: Should parents be able to opt their children out of sex education programs?

While the previous chapter focused on analyzing factors that contribute to how parents view sex education (including how these factors play into parental consent for their child’s participation in these programs), this chapter considers the question: *should* parents be able to opt their children out of sex education? The current opt-out system in California schools rests upon a contextually particular set of premises about the relationship between children and adults, the dynamics between parents and the state, notions of private and public space, and the bounds of public education. Focusing on the normative question of whether or not this decision should fall to parents is one way to navigate these contentious waters. This chapter evaluates this question through both a legal and a public health perspective.

### *Estimates of Opt-Out Rates*

Knowing how many students actually are opted out helps frame the magnitude of the impacts and the number of people who fit into the category of “direct stakeholder.” Given controversies generated by questions of parental consent in sex education, it is striking how little is known about the overall percentages of American parents who opt their children out. Despite this lack of peer-reviewed published research, The Sexuality Information and Education Council of the United States (SIECUS) estimates that the average opt-out rate in American schools is less than 5% (“Opt-Outs and Sex Ed” 2013). Data on opt-out rates in

California is scant, but a 2003 survey of school districts in the state demonstrated a small opt-out rate for children in grades 6-12: 70% of districts included in the survey reported an opt-out rate of 1% or less, and 93% of districts reported an opt-out rate of 5% or less (“Opt-Outs and Sex Ed” 2013).

Even though students who are opted out are estimated to be relatively small percentages of the whole, questions of whether or not parents should be able to limit exposure to this programming remain contentious. This idea is further complicated by the fact that some California schools improperly use opt-in models rather than opt-out.<sup>18</sup> This means that the number of students who don’t receive sex education is likely to be higher than these percentages describe, although there is not currently data to demonstrate the exact extent.

## **Section One: Legal Analysis of Parental Opt-Out**

### *Legal Rights of Parents: In Defense of Opt-Out*

A legal analysis of the issue of parental consent for sex education divides primarily into two opposing camps: one side favoring parent’s rights, and the other side favoring student’s rights. We will first consider defenses of the legal right of a parent to opt their child out of sex education. Brown (2009) considers multiple dimensions of a parent’s legal right to opt their child out of sex education, beginning with tensions between parents and the state in regarding opting out and who should

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<sup>18</sup> This idea is discussed further in Chapter Five.

guide the moral upbringing of adolescents. Brown states that the state does have a “public health interest in ensuring that citizens know about sex and disease prevention,” but it is less clear to what extent it should be able to pursue these objectives at the “expense” of parental rights (Brown 2009, 9). She defines a major part of a parents’ right as including the “fundamental right to direct their children’s moral and educational upbringing” which “includes the right to exempt their children from objectionable sex education programs in public schools” (Brown 2009, 2). The root of this “fundamental right” to determine how and when children are exposed to topics involving sex, Brown argues, is “inextricably linked to one’s moral or religious beliefs,” and that parents have a “constitutional monopoly” over these domains according to legal precedents (Brown 2009, 6). Brown makes a compelling case that parents have a legal right to opt their children out of sex education.

Brown then points to a variety of specific cases to illustrate how courts of various levels have come down in favor of broad parental rights in reference to the public education system. Starting at the highest level, she explains that the Supreme Court has a long history of ruling that parents have a fundamental right to control the upbringing of their children, and that the court has defined a “private realm of family life which the state cannot enter” (Brown 2009, 3). This right is referred to as the “Meyer-Pierce right,” and is based on two cases dealing with parental rights relative to children. Meyer v. Nebraska was decided in 1919, and involved tensions between German immigrants who wanted to teach their children their native

language and the post-war Americanization movement (Woodhouse 1992, 1002). The court famously ruled that children are “not the creature of the state,” and that parents have “fundamental right to direct their children’s educational, moral, and religious upbringing” (Brown 2009, 3). *Pierce v. Society of Sisters* took place in 1925 and struck down an Oregon statute requiring all children to attend public school. This case set the precedent against the idea of children belonging primarily to the nation instead of their families (Woodhouse 1002). While many cases regarding parental rights have followed, these two cases combined set the tenor for much of the legal thinking about parental rights.

While the line of legal precedent regarding parental rights stems from the Meyer-Pierce right, Federal circuit courts have disagreed about whether the Meyer-Pierce right “retains any vitality once children cross the public schoolhouse door” (Brown 2009, 3). This is because parents have a certain degree of freedom in deciding whether or not to enroll their children in public school—the state cannot force parents to do so. But for parents who do choose to enroll their children in public institutions, is it acceptable for them to pull their children out of discrete elements of the curriculum? The Supreme Court has not addressed the question of at what point a school transgresses its bounds as an educational institution and “usurp[s] the parental role,” but this question applies readily to parents who want the benefits of sex education, but not at the expense of their right to control that to which their children are ultimately exposed (Brown 2009, 2). Brown recognizes the complexity of this challenge from the perspective of schools:

The state has an interest in educating its students to be productive and engaged citizens. A school's purview of authority therefore extends beyond mere reading, writing, and arithmetic. To that end, schools must retain some degree of autonomy to set and administer a curriculum for effective education. The state's interest is therefore double faceted and includes both effective administration and the substantive content of educational materials (Brown 2009, 9).

Perhaps, then, the question of parental rights in the face of a public school education hinges upon the amount of exemption ability that allows parents to retain their desired rights but without hindering the state's ability to provide useful education.

While Meyers-Pierce is regarded as foundational in establishing the legal precedent in favor of parental rights, scholarly critiques of its philosophical underpinnings highlight troubling undertones that should also be considered in transitioning from considering parental rights to considering the rights of children to receive sex education. Woodhouse (1992) critically examines the basis of the Meyer-Pierce rulings. Today these landmark cases are commonly remembered as standing "for the values of pluralism, family autonomy, and the right to "heed the music of different drummers." But Woodhouse argues that this is an incomplete vision of the meaning behind these cases, and that they were also "animated by another set of values—a conservative attachment to the patriarchal family, to a class-stratified society, and to a parent's private property rights in his children and their labor" (Woodhouse 1992, 997). This critique is especially relevant, considering the foundational nature of these cases in the entire "constitutional theory" of family.

A careful analysis of this paternalistic "child as private property" idea is necessary to understand how these cases (which are cited as the foundational basis

of the parental right to opt-out) conceptualize how children fit into the family and how this role is interpreted in family law. Woodhouse is adamant that she does not seek to delegitimize religious or intellectual liberties in her re-visioning of these cases, but to recognize that they, "...announced a dangerous form of liberty: the right to control another human being. Stamped on the reverse side of the coinage of family privacy and parental rights are the child's voicelessness, objectification, and isolation from the community" (Woodhouse 1992, 1001). These critiques necessitate looking more fully at the issue of parental consent for sex education from a child's rights perspective.

#### *Legal Rights of Children: Questioning Opt-Out*

After considering parent's rights (and critiques of this perspective) a consideration of the legal rights of children to receive sex education is now relevant. Brough (2008) presents a twofold argument against the opt-out function for sex education. The first component of this argument is that opt-out measures should be stricter, as many students who are opted out of these programs by their parents never receive the health information taught by the schools. He writes:

State laws permitting parents to easily excuse their children from sex education may comfort parents who fear their control is completely left 'at the threshold of the school door,' but these opt-out provisions ultimately ignore the risks of STDs and pregnancy faced by youths.... Comforting a parent's own nerves should not be the goal of parenting, nor should it be the aim of public school education." (Brough 2008, 411)

This framework presents sex education as a tool that children should have in order to reduce the likelihood of negative life outcomes, and that this information is vital enough that it should not be able to be blocked because of parental preference or discomfort.

The second of Brough’s major arguments against the opt-out function (and in favor of children’s rights to uniformly receive education on these topics) is that providing parents with an opt-out function is *not* a legal necessity. He argues that if parents choose to send their kids to public school, the loss of their absolute control over what the child is exposed to is a “legal reality” (Brough 2008, 410). Thus, lawmakers and school districts may choose to accommodate parental objection to sex education, but they are not constitutionally required to do so. Plainly stated, Brough argues that parents may choose alternate education for their children, but they cannot have control over the curriculum taught in public schools—and it is for this reason that an opt-out provision is not a legal necessity (Brough 2008, 412).

## **Section Two: Public Health Considerations**

### *Sex Education As a Public Health Intervention*

While a legal analysis of parental rights and children’s rights regarding sex education relies largely on discussions of individual rights, how individual rights tie into communal responsibility can be evaluated by applying a public health lens to the issue of sex education and the role of parental consent policies. The Center For Disease Control (CDC) Foundation defines public health as being “concerned with



protecting the health of entire populations” and as taking a preventative approach, “in contrast to clinical professionals like doctors and nurses, who focus primarily on treating *individuals* after they become sick or injured” (emphasis added)(*What Is Public Health?, ND*). Sex education, then, fits into this framework as a preventative measure aimed at whole communities. As Brough (2008) puts it in his argument in favor of stricter opt-out provisions, “Sex education in the public school system can be concisely defined as the state providing information to youth in order to reduce harm” (Brough 2008, 411).

How does thinking of sex education as a public health intervention influence the discussion on the parental right to opt-out? To understand what is at stake if a parent opts out, it is helpful to consider the policy objectives of sex education and research regarding the effectiveness of this education. There are, of course, a variety of ways that educators, policy makers, and administrators think of the objectives of sex education—from being a complete transmission of values and anatomical information in a comprehensive package, to the more simple and measurable objectives of reducing teen pregnancy and the spread of STI’s. As with all agenda setting and framing of policy objectives, deciding upon the goals of sex education is inherently political and much of the strife regarding disagreement about the content and administration of these programs can be traced back to initial disagreement about what objectives are important, and what the proper role of the state is in pursuing these goals in tangible ways.

### *Effectiveness of Sex Education*

So, how effective is sex education? Reliable data show that over the past several decades, teen pregnancy rates have fallen sharply in the U.S.—a 51% decline between 1990 and 2010 (Boonstra 2014). This can be attributed to two possible factors: teens engaging in less sex, and teens increasing their effective use of contraceptives—research points primarily to the latter, and there is “clear evidence” that improvements in sex education programs have contributed a large amount to better and more frequent contraceptive usage that helps explain this decline (Boonstra 2014).

Douglas Kirby, a researcher for the National Campaign to Prevent Teenage Pregnancy, examined studies of sex education programs in a study with “strong experimental design and using appropriate analysis” and found that two thirds of the 48 comprehensive sex education programs surveyed had positive effects, including delaying onset of sex, reducing the number of sexual partners, increasing condom and contraceptive use (40%), reducing the frequency of sex (30%), and reducing unprotected sex (60%) (“Comprehensive Sex Education: Research and Results”, 2009). Thus, there is strong evidence pointing to the conclusion that comprehensive sex education is an effective tool to reduce both the teenage pregnancy rate and the spread of STI’s through increasing effective contraceptive and barrier-method use.

### *Communal Interest Versus Individual Preference: Implications for Parental Consent*

Properly implemented comprehensive sex education is effective at reducing unwanted pregnancy and the transmission of STIs. Returning to the question of communal interest versus individual preference with this knowledge in mind, what are the implications for parental consent policies in sex education? Incorporating a discussion of how the two sides conceptualize the distribution of moral responsibility for health education yields further insight.<sup>19</sup> On the one hand, the logic of “personal responsibility” ties into the classical liberal mode of political thought, and states that individual people are responsible for their own decisions, and should not be subject to undue government interference. On the other hand is the logic of “social responsibility,” which tends to fit with progressive political thought and locates individuals in communal contexts, recognizing that for the good of the collective, certain individual liberties and preferences are worth giving up or compromising (Boryczka 2009, 185).

While understanding these two frameworks helps untangle implicit values that contribute to a parent thinking sex education is important or not, the reality from a public health perspective is that allowing individuals to opt out of the system puts the collective at a greater risk. If there are more people who do not know how to properly use a condom or that hormonal birth control methods do not protect

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<sup>19</sup> This framework of “personal responsibility” versus “social responsibility” comes from Boryczka (2009). She uses this framework to describe the root of parental preference for abstinence-only or comprehensive sex education, but it is useful here too.

against STI's, then everyone faces larger risks of contracting an STI or having an unwanted pregnancy. These individual negative health outcomes are compounded by burdens on taxpayers for unwanted pregnancy in particular, and for the resulting cycle of poverty endemic to young parents.

### *Legal and Public Health Lenses: Conclusion*

This section has provided an examination of whether or not parents should be able to opt their children out of sex education from both a legal perspective and a public health perspective. Among the main takeaways are deep challenges of a “one size fits all” model of public education: how can schools be culturally sensitive and avoid impinging upon individual rights, but still fulfill their societal obligation to educate youth? Of course, conclusions about whether or not parents should be able to opt their children out of sex education are likely to be laden with normative preference. Looking to both legal and public health analyses helps to ground this contentious issue in scholarly context. At the end of the day, the fate of the most important group of stakeholders—the students themselves, some of whom are opted out of sex education—is fully in the hands of the adults who surround them.

## **Chapter 5: How does the process of parental consent actually happen on the ground?**

A multitude of factors that influence parental consent and many questions have been raised in this paper regarding whether parents should have the right to opt out. This section examines how the opt-out process actually happens on the ground in public schools. This is where perception and reality clash, and one cannot safely assume that policy implementation occurs as intended by California lawmakers. Unfortunately, the parental consent model is but one example of many compliance gaps endemic to the policy domain of sex education. Public policy is only as good as its implementation—having a law in the abstract does nothing if it isn't brought into the lives of people in a meaningful way.

It's no secret that sex education has been historically fraught with controversy, and that it has led to contentious debates between political and social factions. Given the potential for this issue to cause controversy, its implementation merits extra scrutiny. If implementation is inherently political, then it is even more political for controversial issues. It is for this reason that this chapter will evaluate the challenges and realities of implementation to get a fuller picture of sex education in its real-world expression. This chapter will combine evidence drawn from research literature on compliance with California education codes, the author's experience as a public school sex educator, and qualitative information drawn from interviews with teachers and administrators. It examines:

- (1) How parental consent process plays out on the ground,
- (2) Why sex education policies are not more uniformly implemented, and
- (3) Barriers to more effective implementation.

## **Section One: Compliance Gaps and Types of Parental Consent Used in California Schools**

The last major review of compliance with sex education policies in California was conducted in 2011 by Sarah Combellick and Claire Brindis at the Bixby Center for Global Reproductive Health. Although now relatively out of date, this report found that a “concerning number” of districts were out of compliance with the California Education Code rules on sex education, despite progress that was made after the 2003 passage of The California Comprehensive Sexual Health and HIV/AIDS Prevention Act (SB 71) (Combellick & Brindis 2011, 16). The report found compliance gaps on multiple fronts, including that nearly one out of three districts had some type of opt-in policy.<sup>20</sup> Combellick & Brindis write,

This goes against the way the law was written and places a burden on teachers, parents, and students. It may also result in fewer students being included in HIV/AIDS prevention and sex education instruction. As one district administrator who was out of compliance commented, “[the] challenge is to make sure everyone turns in their [permission] slips” (17).

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<sup>20</sup> Other major compliance gaps included that 25% of districts provided abstinence-based sex education, and that 37% of districts did not have properly trained instructors (Combellick & Brindis 2011, 17). I received absolutely no training from Ironwood before being sent to give sex education presentations in local high schools. This may have been a breach of compliance in and of itself.

While it is possible that things have changed since this study was published in 2011, it provides a scholarly benchmark to consider the trajectory of compliance in both a general sense and in regards specifically to parental consent policies in California.<sup>21</sup>

During my internship as a sex educator through Ironwood Community Health, I noticed that two out of the three schools where we regularly gave presentations had opt-in parental consent.<sup>22</sup> While this is a tiny sample size and definitely cannot be generalized to a larger scope, the variation among the three schools is significant and yields interesting insights into why opt-in happens in place of opt-out. It is also significant that the reasons opt-in was used differed between the two schools that were out of compliance.

At Skyline High,<sup>23</sup> the teacher collected permission forms at the beginning of the class, and about five students did not have them and had to leave the room. I interviewed this teacher later and when I asked him about the parental consent policies at Skyline, he said:

For the sex ed part of the curriculum, there has to be parental consent. And it has to be in writing. If the parent decided not to sign it, or the student doesn't show up that day, or the day you're supposed to have your

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<sup>21</sup> In a follow up interview with Claire Brindis, she explained that she had not been able to secure funding to do a follow-up study on California sex education policies. She said that she would expect to see similar levels of compliance gaps today given that sex education is not high on the list of education policy issues, because roll-out of the CA Healthy Youth Act will take some time, and because without direct pressure to do better, schools won't make an effort to better comply with the specifics of sex education policies.

<sup>22</sup> See appendix for several parental consent forms used in the high schools where I presented.

<sup>23</sup> All names of schools and interviewees have been changed.

permission slip back, then I have to give the student an alternative assignment or send them to the library for that class period.

This teacher was convinced that it was the school's policy that sex education classes required parental opt-in through permission slips. In a conversation with the assistant principal of Skyline, I learned that this is not in fact the school's policy. He told me plainly: "We have an opt-out feature for students, we do not have an opt-in. The opt-out is part of our registration process at the beginning of the year." This demonstrated a significant disconnect between Skyline administrators and teachers. Teachers take the main role of being implementers of the state's sex education policies. Skyline High is a prime example of how implementation can disintegrate at any level of the chain of command.

Foothill High was also out of compliance on parental consent, but for a different reason. I gave presentations at Foothill multiple days and built a close rapport with one teacher in particular, Ms. McCurry. She also utilized permission slips in her classroom, but she made it clear to me that this was of her own volition, not because she thought it was a school or state policy. She told me,

There isn't a permission slip required by the school, but I give them [the students] one more to protect myself from parents who might be angry that their kids got this information without their knowledge. Some parents are just crazy. Our health class has freshmen through seniors, and some parents don't want their kids in the class that young.

In each of the class sessions I led at Foothill, between five and eight students (out of classes with 20-25 students) had failed to return permission slips, and thus were given an alternative assignment and sent to the library for the class period. During a



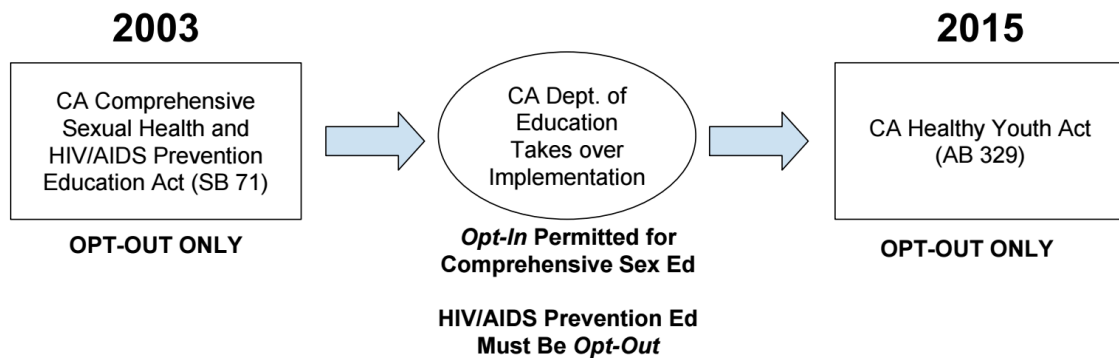
lunch break one day, I remarked to Ms. McCurry that her students were unusually well behaved during my presentations compared to other schools I had been to. She told me that the reason for this was that most of the “troublemakers” were kids who had failed to get the permission form signed, and that she was pretty sure it was because kids hadn’t taken the effort, not because the parents had declined to sign it. This struck me as highly problematic, given that kids who are already showing signs of behavior issues are the ones who are most likely to benefit from having knowledge about mitigating the risk of pregnancy and STI transmission.

What could explain this tendency towards improperly using permission slips when they aren’t required? Zimmerman (2015) offers some insight into how teachers’ instinct for self-protection can interfere with the provision of sex education. He makes the point that sex education can put teachers in delicate situation because, “...they [seek] most of all to avoid controversy—and to keep their jobs” (Zimmerman 2015, 9). Thus, granting teachers any sort of “freedom” to deal with sex education as they like is definitely not helpful, as it places more controversial decisions in their hands (Zimmerman 2015, 9). Perhaps Ms. McCurry didn’t feel that she had sufficient backing from administration in the case that a parent ever did attack her for content presented in her classroom, and as a result she felt the need to provide herself extra cover.

## Section Two: Explanations for Compliance Gaps

Another key explanation for why schools fail to comply with state policies regarding sex education in general could be that they have trouble keeping up with regulations as they change. A brief policy chronology of the parental consent policies in California highlights how this might have played out. The 2003 passage of SB 71 contained provisions that districts must have an “opt-out” policy allowing parents to remove their children from sex education and HIV/AIDS prevention classes (Combellick & Brindis 2011, 10). Under SB 71, opt-in policies were initially prohibited, but the California Department of Education became responsible for implementing this law and interpreted it to mean that opt-in policies could be used for comprehensive sex education, but *not* HIV/AIDS education (Combellick & Brindis 2011, 10). This changed under the CA Healthy Youth Act of 2015, which only permitted opt-out. Perhaps the lack of compliance noted in Combellick and Brindis’s 2011 study and the lack of compliance I came across in my own field work stemmed from schools simply being behind the times on these policies.

Figure 2: Parental Consent Policies in Flux: 2003-2015



### Section Three: Barriers to More Effective Compliance

After examining the status of sex education implementation and looking at possible explanations for why these policies are not being implemented more faithfully, the question becomes: what is stopping educators from doing better? As was demonstrated in the case of Skyline High, simple communication breakdowns and misaligned goals between administrators and instructors could be partially to blame. Combellick & Brindis (2011) point out that while “higher-ups” may find policies on what needs to be taught straightforward, there are sometimes communication hurdles getting policies actually implemented in classrooms (15). In their 2011 study, they asked district officials and teachers “Do you find the California laws governing sex education and HIV/AIDS prevention education clear or confusing?” 70% of district officials responded that they found these laws “clear,” compared to 42% of teachers. Combellick and Brindis describe that the results of this survey indicate a “lack of familiarity at instructor level” (Combellick & Brindis

2011, 15). Given that teachers are ultimately responsible for implementing these policies on the ground, lack of familiarity is a major obstacle to effective implementation. Combining communication challenges with obstacles relating to keeping up to date with current education codes creates a situation where the interpretation and enforcement of sex education policies is highly variable in California public high schools.

## Chapter Six: Conclusion

The significance of sex education and parental consent functions echo far beyond either classroom walls or the confines of individual households. Sex education is an emotionally charged issue that taps into the heart of much larger philosophical questions about education and health policy and limits of individual freedoms in the face of communal interests. Debates about rights and responsibilities can be amorphous and hard to pin down in specifics, so a deep consideration of the opt-out function forces the line of inquiry to move from normative to practical policy analysis. This final chapter will recap arguments presented in this thesis, explore a comparison between sex education and vaccine policies, and provide policy recommendations.

### *Chapter Recap:*

After laying fundamental historical, cross-cultural, and policy background in Chapter Two, Chapter Three asked the question “What factors influence parental views on sex education, including the decision to opt a child out of sex education provided at the high school level?” By considering factors that forge parental perspectives on sex education, we have the best chance of unpacking values and assumptions that guide the chain of potential events that follow decisions to opt out or not. Parental perspectives on sex education are drawn from a variety of sources, including cultural and moral influence and competing frameworks of risk that are applied to the category of childhood. Parental perspectives on sex education are

extremely diverse because of the huge number of factors at play in forging these opinions. Some of the reasons parents opt their children out of sex education are religious reasons, concerns about state overreach, and fear that their children will be exposed to misinformation.

Chapter Four asked the question “Should parents be able to opt their children out of sex education programs?” It is no secret that parents have large amounts of power over their children in American society. This presents real challenges when considering the rights of these two groups when they collide over an issue such as sex education. American legal precedents surrounding parental rights are based on archaic views of children as property, and work to further legitimize parental control and erode children’s rights. For this reason, incorporating a public health perspective reveals what is at stake when parents prioritize their individual preferences over the health concerns of their children, thus potentially jeopardizing the health of the population as a whole. These three perspectives appear somewhat irreducible, but there is still value in building a thorough understanding of them.

Chapter Five put aside normative questions of what rights parents and students *should* have, and considers the practical question of how parental consent actually happens on the ground. This is an essential last step: as with the gradual erosion of abortion access over the last 20 years has demonstrated, having a theoretical right is rendered meaningless if there is not infrastructure, accountability, and resources in place to make sure rights are actually accessible.

Improper implementation of sex education policies in California is a real problem, and is arguably more impactful than the opt-out function itself. Some of the major compliance gaps in California include lack of communication and alignment about goals among school administrators and teachers, not keeping abreast of changes in policies as they occur, having improperly trained instructors, missing large chunks of the curriculum, having opt-in instead of opt-out, not devoting enough time to sex education, and not teaching it at all.

#### *Policy Comparison: Vaccine Legislation & Herd Immunity*

Due to the preponderance of perspectives, assumptions, and competing objectives surrounding sex education, it is difficult to make an unbiased claim definitively one way or another on the issue of whether or not parents should be able to opt their children out of sex education. Debates around sex education in many ways correspond with recent controversies surrounding vaccine policies—comparing these two value-laden issues yields interesting insights. Vaccines are widely regarded as among the most “cost-effective and successful public health interventions” (Lee et al. 2013). In the US, vaccines have decreased most vaccine-preventable diseases among children by 95% (Lee et al. 2013). Current California legislation reflects these findings: in 2015, SB 277 made vaccines a requirement for every child in the state, except for medical exemptions.

And yet, as is the case for sex education, parents still object to these science and evidence-based interventions. Of course, these issues are not entirely

analogous: research on effectiveness of vaccines is much more clear-cut than that on sex education— which is complicated by improper or inconsistent implementation. At a baseline level, neither of these interventions is the *source* of harm: sex education does not lead to sexual experimentation, and vaccines do not lead to children getting sick. In fact, there is substantial evidence that both interventions lead to better outcomes for children. Given this assurance, one could theoretically argue that a government would be relatively more justified in removing opportunities for parents to opt their children out of these programs. Coerciveness of a policy versus the burden of proof necessary as justification mostly runs its course in the realm of the theoretical framework that justifies what is optimal over what is feasible.

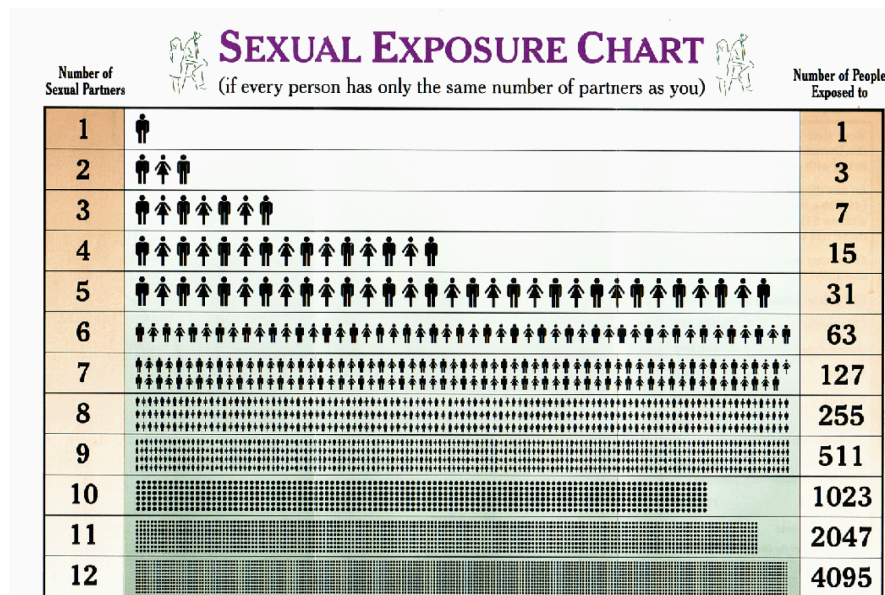
Another key insight from comparing the vaccine issue to parental consent policies for sex education is the policy objective of “herd immunity,” which is the idea that the public health gains made by vaccines can only be maintained if vaccine rates stay high enough to prevent outbreaks. Typically between 80-95% of a population must be vaccinated for this to happen (Lee et al. 2013). When herd immunity is achieved through high vaccine rates, the entire population enjoys a positive externality—including vulnerable individuals who may not have been able to get vaccinated.

Could herd immunity against unplanned pregnancy and STI transmission be achieved through sex education? Considering the STI exposure chart below (which demonstrates the cumulative risk of STI transmission as an individual’s number of



partners increases) reveals commonalities between the tools of vaccines and sex education in combating the spread of disease and other undesirable health outcomes. Every person who does now know how to effectively use barrier methods to reduce the likelihood of STI transmission puts himself or herself and countless other people at risk down the line.

Figure 3: Herd Immunity and STI's: Sexual Exposure Chart



<http://www.ndhealth.gov/hiv/Program%20Material/Brochures/Sexual%20Exposure%20Poster.jpg>

### Policy Recommendations

While there are strong arguments for removal of opt-out for sex education, the political reality of this would be far too contentious to be a feasible policy solution. Guarantees of religious freedom and personal liberties are also important pillars of American democracy, and for now, opt-out seems to be a suitable

compromise between these competing aims. For the state of California, smarter and more realistic policy goals would focus on improving implementation of the 2016 California Healthy Youth Act. The Act marked a great step forward for sex education in the state, given its emphasis on medically accurate and age-appropriate information and the fact that it banned parental opt-in. As we have seen, great policies are rendered useless in the absence of accountability and enforcement—two factors that are currently missing in California public school sex education.

Three specific improvements could be made to ensure that the act is implemented in full. First and foremost, the chain of communication from state education officials down to the teacher level could be greatly improved so that policies on sex education actually reach not only the district level, but also get into the classroom itself. Two specific improvements could be made from here. One would be ensuring that there are better accountability measures in place to make sure teachers follow through with the comprehensive curriculum in full. The other would be ensuring that schools implement opt-out, and never mistakenly implement opt-in. These three changes would greatly improve the landscape of sex education in California without needing to make changes to existing laws or to come up with better methods.

### *Overview of Policy Recommendations*

- (1) Improve chain of communication to ensure information on sex education policies flows from state education officials down to districts AND teachers
- (2) Improve accountability measures to make sure teachers follow through with the curriculum stipulated by AB 329 in full
- (3) Insure that schools implement opt-out (never opt-in)

### *Final Statement*

English writer G.K. Chesterton once wrote, “Education is simply the soul of a society as it passes from one generation to another.” Put in these terms, debates surrounding sex education are cast in an even more critical light. How does the way that we educate the next generation about sex and sexuality reflect on our collective vision of the content of this soul? How does it reflect our trust in the next group to whom the responsibility will fall? I have argued that a hard-line approach to banning the parental opt-out function is not feasible, given concerns about parental autonomy and religious freedom. While it is my individual view that parents should be loath to close off educational opportunities for their children, this perspective must be balanced with the diversity of opinion endemic to life in a democratic society. It is my view that ignoring uncomfortable truths will never cause them to disappear, and misunderstanding the evidence is one thing, but ignoring it is irresponsible and counterproductive. However, I recognize that these critiques are

made possible by my own positionality as a liberal, well-educated, progressive student, and that there could be danger in thinking that these things give me all the answers.

While sex education should not be considered a silver bullet to solve social issues, evidence points to the fact that it is one important component in creating positive outcomes in the lives of young people. In California, much of the infrastructure is already in place to provide students with high quality sex education that reifies their confidence and will serve them well as they navigate the transition into adult life. We have the tools we need to make a difference in the lives of students who are exposed to California's sex education programs; we just need to make sure they are put to use. In this regard, half of the battle has already been won.

# Appendix:

## Document A (Page 1/2): An Opt-Out Form



Instructional Services  
2006-07 Memo # 22  
Attachment A



### Parent Request to Excuse Student from Sex Education and/or HIV/AIDS Prevention Curriculum

To the principal of \_\_\_\_\_,  
(Name of school)

I am writing to request that my child(ren) be excused from the following instruction:

- Family Life/Sex Education (Education Code Section 51240)
- HIV/AIDS and Sexually Transmitted Diseases (Education Code 51201)

Please print legibly the complete name(s) of your child(ren) who attend this school and whom you wish covered by this request for the 2006-2007 school year.

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_
4. \_\_\_\_\_

Name of the Parent/Guardian (please print) \_\_\_\_\_

\_\_\_\_\_  
Parent/Guardian signature

\_\_\_\_\_  
Date

Parent Request to Excuse Student/Opt-Out  
2006-07

## Document A: (Page 2/2) Health Notification Parent Letter

Instructional Services  
2006-07 Memo #22  
Attachment C

6

July 18, 2006

Dear Parents/Guardians,

[Redacted] School District uses the Holt, Rinehart & Winston health textbook series, *Decisions for Health* at middle school and *Lifetime Health* at high school, as the primary resources for teaching the eight (8) Health Expectations, as defined in the 2002 Health Framework for California Public Schools:

- Students will demonstrate ways in which they can enhance and maintain their health and well-being.
- Students will understand and demonstrate behaviors that prevent disease and speed recovery from illness.
- Students will practice behaviors that reduce the risk of becoming involved in potentially dangerous situations and react to potentially dangerous situations in ways that help to protect their health.
- Students will understand and demonstrate how to play a positive, active role in promoting the health of their families.
- Students will understand and demonstrate how to promote positive health practices within the school and community, including how to cultivate positive relationships with their peers.
- Students will understand the variety of physical, mental, emotional, and social changes that occur throughout life.
- Students will understand and accept individual differences in growth and development.
- Students will identify information, products, and services that may be helpful or harmful to their health.

Within the eight (8) expectations are a variety of skills and behaviors that students are expected to master. Parents can review the Health curriculum in greater detail by requesting a copy of the Health Framework from their school site, or they may access it online from the California Department of Education website at [www.cde.ca.gov](http://www.cde.ca.gov). The Health textbooks and materials are available at each school site for parents to review. In addition to the textbook, our schools will be using two other curriculum resources to support our instructional program of promoting healthy behaviors: *Keeping Safe from HIV* and *Too Good for Drugs*. These materials are also available for review at the school site.

Should you decide to excuse your child from instruction and use of classroom materials that deal with the topics of human sexuality and the prevention of HIV/AIDS, and/or sexually transmitted diseases (STDs), please complete and return the attached request form to your child's school.

If you have questions or concerns, please feel free to call [Redacted], Director of Student Learning and Site Support, at [Redacted], extension 6970.

Sincerely,

[Redacted], Deputy Superintendent  
Division of Instructional Services

Attachment(s): Request Form  
Education Code

Health Notification-Parent Letter - Secondary  
2006-07

**PARENT / GUARDIAN PERMISSION FORM**  
- FOR -  
**PARTICIPATION IN THE KNOW YOUR RISK (KYR) PROGRAM**

Your child has the opportunity to participate in a sex education/health program at their school entitled "Know Your Risk" (KYR). We are asking for your permission to allow your child to participate in the program.

The KYR program will be presented by a Health Educator from East Valley Community Health Center. KYR is a one-hour long session that is designed to help young people make positive choices regarding risky behaviors. The presentation is designed to inform students about the risks associated with adolescent sexual activity and provide them with the skills necessary to make wise choices regarding abstinence STD/HIV and pregnancy prevention.

The KYR Program Goals are:

- Discussion on the benefits of abstaining from sexual behavior
- Increase the skills necessary for preventing teen pregnancy
- Increase the knowledge of the transmission and prevention of HIV and other sexually transmitted diseases
- Assist in the awareness of youth community resources

For additional information please feel free to contact

44.

My child \_\_\_\_\_ Period \_\_\_\_\_  
(Please print your child's full name)

(Check only one)

- Yes, my child may participate in the 1-hour session KYR Program at their school.
- No, my child may **not** participate in the KYR Program.

\_\_\_\_\_  
Name of Parent / Guardian (please print)

\_\_\_\_\_  
Signature of Parent / Guardian

\_\_\_\_\_  
Date

If you have any questions concerning the Know Your Risk (KYR) Presentation please call

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