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Reply to: Virginia

June 26, 2018

Via U.S. and Electronic Mail

Dr. Jennifer McCormick
Superintendent of Public Instruction
Indiana Department of Education
200 W. Washington Street
Indianapolis, IN 46204
superintendent@doe.in.gov

RE: Public Law 154 (2018) Human Sexuality Instruction Notice and Opt-Out Requirements

Dear Dr. McCormick:

By way of brief introduction, Liberty Counsel is a non-profit litigation, education, and public policy organization with an emphasis on constitutional law, with offices in Florida, Virginia, and Washington, D.C. Liberty Counsel provides *pro bono* legal representation to a variety of individual and institutional clients, including public school students, parents, and school districts, with a particular focus on religious liberty and other First Amendment issues.

Liberty Counsel is working to protect the “**primary role of the parents in the upbringing of their children,**” which is “**now established beyond debate as an enduring American tradition.**” *Wisconsin v. Yoder*, 406 U.S. 205 (1972). (Emphasis added). Nowhere is this parental role more critical than in the provision of human sexuality instruction in the public schools. The purpose of this letter is to reiterate the requirements of Indiana’s recently enacted Public Law 154 (2018) (“P.L. 154”), as well as provide your office with the attached model “Non-Consent Form” pursuant to P.L. 154, which takes effect on July 1, 2018. Liberty Counsel’s constituent parents will be providing this comprehensive form to Indiana school districts.

Under P.L. 154, before any instruction in human sexuality may be given to children, each public school district in Indiana **must inform parents of the content and nature of the instruction, and provide at least two written requests for parental consent/non-consent.** P.L. 154 became necessary as a result of some Indiana school districts seeking

to skirt legislative intent regarding human sexuality instruction, such as that expressed in Indiana Code § 20-30-5-5 (morals instruction); § 20-30-5-6 (good citizenship instruction); § 20-30-5-9 (hygiene) (which is currently not being utilized by the State Department of Health and the Indiana Superintendent of Public Instruction); and § 20-30-5-13 (instruction on human sexuality or sexually transmitted diseases, which requires the promotion of abstinence). Under P.L. 154, parents are now entitled to full, accurate descriptions of instructional materials, and effective notice, so that they may exercise their right to non-consent if they find the material objectionable.

Under Public Law 154, the First Notice must (A) “**contain an accurate summary of the contents and nature of the instruction** on human sexuality” that the District intends to provide to children; (B) inform parents of their right to “**review and inspect all materials related to that instruction;**” (C) inform parents that their child is entitled to “**alternative academic instruction**” during the same time frame that the instruction on human sexuality is provided; and (D) request from the parent 1) Consent to the instruction; or 2) Non-Consent to the instruction.

If the District does not receive a response from a parent to the First Notice - Consent/Non-Consent request within 21 days, the District must follow up with an additional written Second Notice containing the same information above, again requesting Consent/Non-Consent from the parents within ten (10) additional days. If the District still receives no response by the parents before the expiration of the ten additional days, then and only then may the District provide the students “instruction on human sexuality” (unless the parent or emancipated student subsequently opts out of the instruction, which may still be done at any time following the District’s issuance of a Second Notice).

At all times, regardless of parental consent and school district compliance with P.L. 154, ALL content in public school sex education curriculum, instruction, discussion, supplemental materials, or third-party referrals must remain consistent with Indiana Code § 35-49-2-2, which prohibits obscene matter harmful to minors. The violation of this statute is a Level 6 felony if the obscene matter depicts or **describes sexual conduct involving any person who is or appears to be under eighteen (18) years of age.**” Ind. Code § 35-49-3-1. (Emphasis added). If sex education curriculum contains obscene material and false or misleading statements or information, **there is no defense under the statute’s exception**, because “considered as a whole, it lacks serious literary, artistic, political, or scientific value for minors.” Ind. Code § 35-49-2-2. There can be no scientific value in a curriculum containing false or misleading information, or in curriculum derived from objectively false information.

The importance of parental consent and prior curriculum review of ALL instructional materials cannot be overemphasized. Parental consent protects parental rights, ensures children are protected from instruction which encourages them to engage in early-onset and high-risk sexual activity, and safeguards the District and its staff from potential liability for civil rights violations. Consider the recent examples of Virginia’s Albemarle County Public Schools, and Sunnyside Unified School District in Arizona.

The Albemarle County Public Schools failed to carefully scrutinize the “Sex Positivity” curriculum developed by a local third-party non-profit “[Sexual Assault Resource Agency](#)” (“SARA”), and ACPS also failed to seek parental consent and review of the materials, as required by Virginia law.

During “Family Life Education” classes on April 13, 2018, two classes of 14-year-old girls were shown two different YouTube videos describing sex acts in graphic detail. Both videos contained crude colloquial terms for genitalia. One video, entitled “Male Pleasure!” contained discussion and images of how to provide sexual pleasure to males. The video contains too many offensive statements and images to describe here, but suffice to say that the discussion included oral and anal sodomy, masturbation techniques and the use of artificial devices. The other video, entitled “How to Help Her Orgasm,” also went into graphic detail regarding female sexual pleasure. The videos were sponsored by and contained multiple advertisements for the website of a seller of pornography and sex toys.¹

Sunnyside Unified School District² provoked public outrage by proposing the “comprehensive sex education” curriculum “Rights, Responsibilities and Respect” or “3Rs.” It is developed and promoted by “Advocates for Youth,” a Planned Parenthood affiliate, which helped develop the so-called “[National Sexuality Education Standards](#)” which are in turn [promoted by Planned Parenthood](#). The Standards are a project of the “[Future of Sex Education \(FoSE\) Initiative](#)” “a partnership between [Advocates for Youth](#), [Answer](#) and the Sexuality Information and Education Council of the U.S. ([SIECUS](#)).” The Standards are based upon the child “sex data” of Alfred Kinsey (*i.e.*, *records of child rape*), which included records of timed-with-a-stopwatch “orgasms” for infants as young as two months old in the infamous “Table 34” of Kinsey’s *Sexuality in the Human Male*.

The 3Rs promotes a twisted view of “abstinence” (“**abstinence from sexual behaviors...means waiting to have vaginal, oral or anal sex.**”)³ (“**abstinence means a penis not going inside another person’s vagina...;**” “**...most people are not abstinent forever...;**” “**...delay having sex until you are a bit older...**”⁴). The “3Rs” encourages kids to have sex “when they are ready,” as long as they have “consent,” promotes and portrays homosexuality, and normalizes acts of sodomy; without giving accurate medical advice regarding the risks of these activities.

3Rs also liberally mentions and refers students to Planned Parenthood or its website. Located at the top of Planned Parenthood’s website, under “Learn,” (a word attractive to school-age children) the very first term is “Abortion.” On that same drop-down appears Planned Parenthood’s “[Glossary A-Z](#),” which contains many words and definitions inappropriate for children, including “abortion,” “abortion pill,” “butt plug,” “dildo,” “drag queen,” “exhibitionist,” “hand job,” “horny,” “lust,” “masturbation,” “mooning,” “morning wood,” “mutual masturbation,” and “three-way.” Many additional inappropriate terms and

¹ <https://www.lc.org/newsroom/details/042618-shocking-va-curriculum>

² <https://www.lc.org/newsroom/details/051118-shocking-curriculum-in-az-schools>

³ Rights, Responsibilities, Respect: Grade 6, Lesson 4, pg. 3, “Communicating About A Sensitive Topic.”

⁴ Rights, Responsibilities, Respect: Grade 8, Lesson 8, “Birth Control Basics”

concepts are in the Glossary, including numerous terms relating to homosexuality, gender confusion, and the normalization of transgenderism.

These examples are important because such curriculum materials are being promoted by organizations and individuals seeking to reshape the sexual ethics of American youth. In order to avoid such enormities in Indiana, and comply with P.L. 154, every Indiana school district must review **each and every piece of human sexuality instructional material, and make it available on its website for parents' prior review**, prior to any such instructional material being provided to the children. Each summary provided by the district must be "accurate," or the district violates the statute.

In order for the parents to receive effective notice, and provide informed consent, at a minimum, the summaries should "accurately" address the presence of the following in the curriculum, citing to that portion of the curriculum where any of the following may appear:

- A. Abortion;
- B. Abstinence, including any definitions of "abstinence."
- C. Birth Control/Contraceptives;
- D. Sexual activity of any kind whatsoever, i.e., "vaginal, oral, or anal sex;"⁵
- E. Sexual orientation, including, but not limited to any variant of homosexuality, including "lesbian," "gay," "bisexual," "queer," or "questioning" identities;
- F. "Transgenderism" or "gender identity," including, but not limited to: gender as social construct; gender binary; gender spectrum; gender reassignment surgery, gender dysphoria, false gender pronouns, gender expression, or cross-sex hormones;
- G. Any referral to a counselor, medical professional, or social worker, within or outside the school;
- H. The privately-sponsored "[National Sexuality Education Standards](#)," "[Future of Sex Education \(FoSE\) Initiative](#)," "[Sex, Etc.](#)," "[Advocates for Youth](#)," "[Answer](#)," "[SIECUS](#)," "[Planned Parenthood](#)," "[The Kinsey Institute](#)," "[Indiana Youth Group](#)," "[GLSEN](#)," or the "[Gay-Straight Alliance](#)."
- I. Any reference to or participation in a personal analysis, evaluation or survey that reveals or attempts to affect my child's attitudes, habits, traits, opinions, beliefs or feelings concerning: political affiliations; religious beliefs or practices; mental or psychological conditions; sexual behavior or attitudes; sexual activity; sexual orientation; gender identity; or illegal, antisocial, self-incriminating or demeaning behavior;

⁵ Rights, Responsibilities, Respect: Grade 6, Lesson 4, pg. 3, "Communicating About A Sensitive Topic."

- J. Any advertisement of or participation in any group, organization, extracurricular club, entity or activity that discusses or addresses sexual activity, sexual orientation or gender identity, whether under the guise of “bullying” or other rationale;
- K. Any additional instruction and discussion, including but not limited to: classroom teachers, school staff, third-party providers, YouTube or other videos, films, livestreaming, other audio-visual methods, textbooks, workbooks, or handout material.

The law is clear that **parents**, not agents of the state like teachers, or outside radical groups, **have the right to direct the upbringing and associations of the parents’ own children**. The law presumes that **parents** possess what a child lacks in maturity, experience, and capacity for judgment required for making life’s difficult decisions, not school employees or activist agencies. “The fundamental theory of liberty upon which all governments in this Union repose excludes any general power of the State to standardize its children. . . **The child is not the mere creature of the State;**” *Pierce v. Society of Sisters*, 268 U.S. 510 (1925). (Emphasis added). “The history and culture of Western civilization reflect a strong tradition of parental concern for the nurture and upbringing of their children. **This primary role of the parents in the upbringing of their children is now established beyond debate as an enduring American tradition.**” *Wisconsin v. Yoder*, 406 U.S. 205 (1972). (Emphasis added).

Liberty Counsel encourages each Indiana school district to scrupulously comply with Indiana’s new P.L. 154 relating to human sexuality instruction. Liberty Counsel will stand with parents to protect their children from dangerous, misleading, obscene material which is harmful to minors.

Sincerely,



Mary E. McAlister, Esq.[†]

Attachment

CC:

Via Email

Indiana State Board of Education
Indiana Public School Superintendents
Indiana Public School Principals

[†]Licensed in California, Florida, and Virginia
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