



June 3, 2009

Superintendent Sharon Liddell
Santa Rosa City High School District
211 Ridgway Avenue
Santa Rosa, CA 95401

Dear Superintendent Sharon Liddell:

We understand that a number of school districts in Sonoma County are using the Free To Be agency to provide instruction in HIV/AIDS prevention education and sex education. We are writing to advise you that California law prohibits the use of Free To Be in public schools, as Lynn Garric, the Sonoma County Office of Education's Safe Schools Project Director recently told you, and to offer you our assistance in selecting a medically accurate, bias-free, comprehensive sex education curriculum that complies with the Education Code.

In her May 5 e-mail to you and other superintendents, principals, and health teachers, Ms. Garric noted that the California Department of Education has stated that Free to Be violates the law governing HIV/AIDS prevention education and sex education in California Schools, the *California Comprehensive Sexual Health and HIV/AIDS Prevention Education Act*, Education Code 51930-51939. (Her message is enclosed.) The American Civil Liberties Union was a sponsor of that law, and we agree with the Department of Education. We are submitting this analysis to supplement its conclusion.

Sections 51930-51939 of the Education Code require that all sex education instruction and materials be medically accurate, comprehensive, and free of bias. In particular, the law requires that:

- All factual information presented must be medically accurate and objective (51933 (b)(2)).
- In grades 7 – 12, instruction and materials must provide information about the effectiveness and safety of all FDA-approved methods of contraception, including emergency contraception. (51933 (b)(10)).
- In grades 7 – 12, instruction and materials must provide information about the effectiveness and safety of condoms and other FDA-approved methods of reducing the risk of contracting sexually-transmitted diseases. (51933 (b)(9)). Instruction must also cover condom effectiveness in preventing the transmission of HIV. (51934 (b)(3)).
- In grades 7 – 12, instruction and materials must teach that abstinence is the only certain way to prevent unintended pregnancies and sexually transmitted diseases *while also providing medically accurate information on other methods of preventing pregnancy and sexually transmitted diseases*. (51933 (b)(8)) (emphasis added).

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- Instruction and materials may not teach or promote religious doctrine (51933 (d)(1)).

Free To Be's instruction violates Education Code 51930-51939 in several respects.

As Ms. Garric noted, Free To Be receives federal Community Based Abstinence Education (CBAE) funds. To qualify for these funds, Free to Be certifies that it complies in *all* of its educational activities with the federal criteria that define abstinenceⁱ—in short, that it is an abstinence-only provider. The federal abstinence definition requires its grantees to provide instruction that “has *as its exclusive purpose* teaching the social, psychological, and health gains to be realized by abstaining from sexual activity” until marriage (emphasis added). Grantees are not permitted to discuss condoms or contraception except to refer to their failure rates, and only in the context of promoting abstinence until marriage. Free To Be models this abstinence-only approach by presenting condoms and contraception solely in a negative light, emphasizing and exaggerating their failure rates.

The federal abstinence criteria, and Free To Be's instruction, directly conflict with California law. As the Superintendent of Public Instruction has advised all school districts: “*abstinence-only education is not permitted in California schools*” (emphasis in original).ⁱⁱ (See his May 4, 2006 letter, enclosed). The California Department of Education further states that not only is abstinence-only education prohibited, but “instruction that emphasizes the benefits of abstinence while focusing exclusively on the failure rates or perceived disadvantages of condoms and other contraceptives is also prohibited by law. This would violate legal requirements that the instruction cover the effectiveness and safety (not solely the ineffectiveness) of condoms and other contraceptive methods and would also violate requirements that the instruction be medically accurate and objective.”ⁱⁱⁱ

The federal abstinence program also compels its grantees to teach that “sexual activity outside of the context of marriage is likely to have harmful psychological and physical effects” and that “a mutually faithful monogamous relationship in the context of marriage is the expected standard of sexual activity.” These statements are not based in scientific fact and are not objective, as required by California law. They also violate the Education Code by being inherently biased against gay men and lesbians, who are not legally allowed to marry in California.

Free To Be's instruction violates the Education Code by aligning itself with the federal definition of abstinence. It also does so by providing medically inaccurate, biased, and incomplete information about condoms and contraception.

California's health policy insists that all young people receive science-based, factual information to protect their sexual health. The comprehensive sex education required by California law has been proven to be effective in reducing the onset of sexual activity among teens and increasing condom and contraceptive use among sexually active teens.^{iv} Abstinence-only education, in contrast, has been shown to have no positive effect on the sexual behavior of young people.^v At a time when one in four teenage girls has a sexually transmitted disease^{vi} and many young people, particularly low-income youth and youth of color, lack access to reproductive health services and information, it is imperative that schools provide the medically accurate, comprehensive education that young people need and that is required by the Education Code.

Parents also overwhelmingly support comprehensive sex education. A 2007 survey of California parents conducted by the Public Health Institute found that 89% of California parents—including 86% of

evangelical Christians, 90% of Latinos, and 71% of people who self-identify as “very conservative” — support sex education that includes instruction about both abstinence and contraception, while 96% oppose abstinence-only sex education. This support is consistent across racial and ethnic groups, religious affiliations and California regions.^{vii}

We request that you send us written confirmation from every school in your district that it will not use Free To Be to provide any instruction or presentations in the 2009-2010 school year or in the future.

As part of our effort to implement the *California Comprehensive Sexual Health and HIV/AIDS Prevention Education Act*, we have provided technical assistance to a number of districts to help them understand the law and identify curricula that are in compliance with it. Whether or not your district has been using Free To Be, if you would like guidance regarding the law and legally compliant curricula, please contact Phyllida Burlingame, our sex education policy director, at Phyllida@pbconsulting.net.

We would appreciate hearing from you within 20 days that Free To Be will not be teaching in any school in your district in the 2009-2010 school year or in the future.

Sincerely,

Handwritten signature of Phyllida Burlingame in cursive, with the initials "NS" written below the name.

Phyllida Burlingame
Sex Education Policy Director

Handwritten signature of Margaret C. Crosby in cursive, with the initials "NS" written below the name.

Margaret C. Crosby
Staff Attorney

cc: Sharla Smith, School Health Connections, California Department of Education

ⁱ For information about the CBAE program and its requirements, including the federal definition of abstinence, see: http://www.acf.hhs.gov/grants/open/HHS-2007-ACF-ACYF-AE-0099.html#part_0_1

ⁱⁱ <http://www.cde.ca.gov/ls/he/se/preveducationltr.asp>

ⁱⁱⁱ “Frequently Asked Questions - Comprehensive Sexual Health Education and HIV/AIDS Instruction” <http://www.cde.ca.gov/ls/he/se/faq.asp>

^{iv} Kohler, Pamela K et al. Abstinence-Only and Comprehensive Sex Education and the Initiation of Sexual Activity and Teen Pregnancy. *Journal of Adolescent Health* 42 (2008) 344-351.

Kirby, Douglas et al. *Sex and HIV Education Programs for Youth: Their Impact and Important Characteristics*, ETR Associates, 2006, p. 6.

^v *Impacts of Four Title V Section 510 Abstinence Education Programs*, Mathematica Policy Research Inc., April 2007. <http://www.mathematica-mpr.com/publications/PDFs/impactabstinenceES.pdf>

^{vi} Federal Centers for Disease Control and Prevention presentation at the 2008 National STD Prevention Conference, Chicago, IL, March 10 – 13, 2008.

^{vii} Constantine, N., Jerman, P., Huang, A., *Sex Education: The Parent's Perspective* Public Health Institute, May 2007.
<http://teenbirths.phi.org/2007SummaryReport.pdf>