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Elizabeth A. Silverman
Scripps College

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SEX EDUCATION IN CALIFORNIA:
THE DISCONNECT BETWEEN LEGISLATION AND IMPLEMENTATION

by

Elizabeth Silverman

SUBMITTED TO SCRIPPS COLLEGE IN PARTIAL FULFILLMENT OF THE
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CHAPTER ONE

Introduction

The state of California is nationally recognized for its efforts in championing youth sex education. Not only does California lay claim to one of the country's strongest laws ensuring comprehensive sex education, it is also the only state that opted not to accept federal funding under the Title V abstinence-only-until-marriage program, which distributes federal dollars to community based organizations interested in exclusively promoting abstinence outside of marriage in youth sex education.¹ In California public schools, sex education, if taught at all, is required by law to be comprehensive, science-based and free of bias.² In 2003, the state passed Senate Bill No. 71 (S.B. 71) which stipulated that public schools were not legally required to teach sex education, save for one mandatory class period devoted to HIV/AIDS education. The bill states that if school districts elect to teach sex education, the curriculum must adhere to the standards of "comprehensive sex education."³

Nationally, the number of American students receiving thorough and high-quality comprehensive sex education before graduating high school is startlingly low; only between five and ten percent.⁴ A national survey commissioned by the National Campaign to Prevent Teen and Unplanned Pregnancy provides other striking statistics. Only sixty eight percent of surveyed students reported having received information on how to correctly use condoms. Fifty three percent were

¹ "California Leads on Sex Ed, But It's Not All Rosy in the Golden State." Burlingame.

² "Uneven Progress" p. 6

³ "Uneven Progress" p. 7

⁴ "National Campaign to Prevent Teen and Unplanned Pregnancy."

aware that having an STD can increase the risk of getting HIV if one is sexually active. Over half of the students surveyed expressed interest in gaining more information about HIV, other STDs, and how to deal with cases of rape or sexual assault. More than forty percent of students wanted to know how to use and where to acquire birth control. On an interpersonal level, forty six percent wanted to be prepared for conversations with a partner about STDs and birth control.⁵ These statistics substantiate a pronounced student interest in the very topics covered under comprehensive sex education.

Comprehensive sex education in California aims to fulfill the following objectives: 1) to provide a pupil with the knowledge and skills necessary to protect his or her sexual and reproductive health from unintended pregnancy and STDs; and 2) to encourage a pupil to develop healthy attitudes concerning adolescent growth and development, body image, gender roles, sexual orientation, dating, marriage, and family.⁶ The law requires that HIV/AIDS prevention education be taught once in middle school and once in high school and states that if comprehensive sexual health education is taught, the local educational agency (LEA) attached to the school district must abide by all provisions enumerated in Education Code 51933.⁷ The LEA may not pick and choose topics. The inclusion of “*if*” is important. *If* comprehensive sexual health education is taught, the curriculum must follow those statutes outlined in the Education Code under state law.

⁵ “National Campaign to Prevent Teen and Unplanned Pregnancy.”

⁶ “Comprehensive Sex Education”

⁷ California Education Code 51930 -51939

Given the purported national student interest in learning more about these topics—all included in comprehensive sex education curriculum—and the widespread support for sex education derived from public opinion surveys, the scarcity and low quality of comprehensive sex education in American classrooms represents a misalignment between education policymakers and constituents. Furthermore, it represents a misalignment at the state and local level between the student constituents, who desire sex education, and local school officials who do not support the full and adequate sex education that is legally allowed to be taught. This thesis explores the fundamental disconnect between California’s image as a national champion of progressive youth sex education and the failure to implement and monitor the instruction of comprehensive sex education as outlined by sections 51930-51939 of the California Education Code.

Literature Review

Rooted in the “culture wars,” detailed by Janice Irvine’s book, Talk about Sex: The Battle Over Sex Education in the United States, sex education debates involve more than the selection of curriculum a public school adopts; rather, they are highly emotional public arguments about sexuality and young people.⁸ The sex education debates are polarized between distinct schools of thought and result in two public school curriculum choices: comprehensive-sex education and abstinence-only sex education. The first is publicly supported and heavily

⁸ Irvine p. 142

endorsed by liberal ideology and policy, while the second is often based in theology.

In a book entitled The Sex Education Debates, Nancy Kendall proposes a paradigm shift from the current focus on *sex education content and public health outcomes* to a more relevant emphasis on *sociopolitical consequences of sex education approaches*.⁹ This paradigm shift is relevant to California's sex education politics with specific regard to comprehensive sex education curriculum. Since comprehensive sex education has been demonstrably successful in lowering rates of teen pregnancies and STDs, the failure by the majority of schools in CA to adhere to legal standards of comprehensive sex education instruction can hardly be seen as inconsequential. Kendall emphasizes the import of comprehensive sex education curriculum. Her arguments in support of comprehensive sex education can be used to strongly defend that particular curriculum as the best choice for students of California's public schools.

Those who deem comprehensive sex education essential for lowering rates of teen pregnancy cite statistics to demonstrate its effectiveness. California's teen pregnancy rate declined by 52% between 1992 and 2005. According to the Guttmacher Institute, this was the steepest drop registered by any state over that time period.¹⁰ Additionally, there is available data to support that the benefits of comprehensive sex education extend beyond lowering teen pregnancy rates. The following quote is an excerpt from a report commissioned by the National Campaign to Prevent Teen and Unplanned Pregnancy in 2007:

⁹ Kendall p. 271

¹⁰ "State Facts on Unintended Pregnancy." Guttmacher.

Overall, about two-thirds of the curriculum-based sex and STD/HIV education programs studied have had positive effects on teen sexual behavior. For example, they delayed the initiation of sex, increased condom or contraceptive use, or both. Virtually all of the programs also improved sexual protective factors. The programs had mixed, but encouraging effects on reducing teen pregnancy, childbearing, and STDs.¹¹

In California and nationwide, proponents of comprehensive sex education have found data to support their position. Conversely, the abstinence-only approach to sex education is “not [statistically] supported by the extensive body of scientific research on what works to protect young people from HIV/AIDS, sexually transmitted infections, and unplanned pregnancy.”¹² Entrenched within the sex education debates are the divergent interests of two key “a-political” stakeholders: school districts and their assigned local educational agencies, and parents. To explain the disjuncture between policy and implementation with respect to sex education in California, it is necessary to identify the relevant stakeholders and the degree of their involvement with this issue.

Issue Stakeholder: School Districts

In the United States, local school districts are given leeway to determine the content of their sexuality education programs. Nationwide, more than two out of three public school districts have a policy that mandates sexuality education.¹³ However, the minimal amount of sex education instruction that this majority of states do provide to students generally emphasizes abstinence. According to a

¹¹ Constantine et al

¹² Collins et al

¹³ Collins et al

survey of school superintendents conducted by the Guttmacher Institute, only 14% of school districts nationwide currently have policies that are truly comprehensive and teach both contraception and abstinence.¹⁴ In California, it is a massive challenge to supervise the wide latitude given to the school districts by the state: there are 371 unified school districts, and only **one** state employee in charge of monitoring whether or not comprehensive sex education is truly being taught in California's public secondary schools.¹⁵ Essentially, school districts have little external incentive to fully implement the standards of S.B. 71 because they do not anticipate follow-up from the state.

Though the California Education Code explicitly supports comprehensive sex education in its legislation, the problem of implementation at the local school district level persists.¹⁶ The implementation, monitoring and evaluation of legislation at the state and local levels are inherently complex tasks due to the multiplicity and variedness of any issue's respective stakeholders. Policy evaluation involves the estimation, appraisal, or assessment of a policy, its content, implementation, goal attainment, and other effects.¹⁷ The policy evaluator wants to know whether and to what extent a policy has accomplished its goals or whether it has had other effects, intended or unintended.¹⁸ The task of evaluating the substance of S.B. 71 is daunting: the state of California has 1,056 school districts, 371 of which are unified (wherein middle schools and high schools

¹⁴ Collins et al

¹⁵ Burlingame

¹⁶ California Education Code 51930 -51939

¹⁷ "Policymaking" p. 271

¹⁸ "Policymaking" p. 276

operate under the same district control).¹⁹ Since school districts operate like small governments, monitoring policy within the education sector presents challenges that do not exist elsewhere.²⁰

Issue Stakeholder: Parents

Sex education is commonly regarded as an ideologically divisive issue, but the gap between parent support for comprehensive sex education and the actual presence of comprehensive sex education taught in classrooms is explained less by ideological differences and more by the divide between pragmatism and absolutism. Results from a random digit dial survey commissioned by the Guttmacher Institute conducted in 2006 highlight the disparity between strong parental support for comprehensive sex education curriculum, and the tendency for school districts to teach within an abstinence-centered framework. Over 1,000 California parents were asked about their sex education policy preferences, the importance of teaching selected topics at different grade levels, and reasons for their preferences. The data revealed that 89% of parents in California support comprehensive sex education, high in all regions and across all subgroup characteristics: race, ethnicity, age, education, household income, religious affiliation, religious service attendance, and ideological leaning.²¹ The lattermost category seems particularly significant: 71-96% of California parents are cited as

¹⁹ "Fingertip Facts on Education in California"

²⁰ "California Demonstrates That Sound Policy Is Crucial in Reducing Teen Pregnancy."

²¹ "California Parents' Preferences and Beliefs Regarding School-Based Sex Education Policy." Guttmacher Institute.

supporters of comprehensive sex education regardless of right or left ideological affiliation.²² This statistic complicates public perception that there is a clear divide between liberal and conservative ideology contributing to the debates surrounding sex education.

The results of the survey suggest, rather, that the divide between a *pragmatic* approach (for example, education that includes the consequence of actions, the importance of providing complete information, and the inevitability of adolescents engaging in sex) and one that is *absolutist* (religious or purity based morality concerns) is more telling in the sex education debates than is the divide between liberal and conservative ideology. In relation to S.B. 71, the survey results describe the majority (89%) of parents as expressed supporters of comprehensive sex education; if the opinion of parents was factored into the authoring of S.B. 71, one might predict that comprehensive sex education would be ubiquitously taught in public schools throughout the state. In reality, the ability of districts to “opt out” of teaching sex education or to administer sex education curriculum that does not meet the bill of “comprehensive” seems to dismiss the parent stakeholders.

The available scholarship on comprehensive sex education, its demonstrated effectiveness, and the extant disparities between its stakeholders in the state of California necessitates a thorough examination of the legal parameters encompassing this issue.

²² “California Parents’ Preferences and Beliefs Regarding School-Based Sex Education Policy.” Guttmacher Institute.

Method

First, I analyzed the passage of S.B. 71, which was amended several times in the California Senate before it was introduced as law in October of 2003. I conclude that the bill's strength was diluted as it passed through the stages of amending, because there were few mandates for school districts that actually passed. Although the amendments dispelled widespread confusion about comprehensive sex education and HIV/AIDS prevention education, S.B. 71 did not provide adequate accountability measures for school districts and local educational agencies' adherence.

Second, I examined the state of sex education ten years after the passage of S.B. 71. Since 2003, only one follow-up study examining the implementation of S.B. 71 has been conducted and published. Authored by Dr. Claire Brindis and Dr. Sarah Combellick from the University of San Francisco and commissioned by the ACLU of Northern California in 2011, "Uneven Progress: Sex Education in California Schools" included results from a survey distributed to 100 unified school districts throughout the state. The report aimed to identify how many schools were opting out of teaching sex education altogether and perhaps more importantly, what kind of curriculum the districts were teaching.²³ The findings revealed a great deal about the disconnect between policy implementation and monitoring in the realm of public sex education in California. For example, schools were more likely to teach about abstinence than other required HIV/AIDS

²³ "Uneven Progress" p. 3

topics.²⁴ This is in direct violation of state law, as S.B. 71 mandates that the sex education taught in public schools must follow the standards outlined in comprehensive sex education curricula and refrain from adopting an abstinence-only approach.

The authors and research team of “Uneven Progress” distributed 100 surveys and then calibrated 33 responses to claim several observations about the state of sex education in California in 2011. Though their sample size is not negligible, it represents less than one tenth of the unified school districts in the state of California. Therefore, while “Uneven Progress” yields significant insight revealing the failure of a majority of public school in California to fully comply with S.B. 71, there is demonstrated need for a follow-up assessment of the current political and social climate of California’s sex education practices.

Chapter Preview

The subsequent chapters will continue to work through the areas of conflict inextricably linked to the politics of sex education in California. These will include: S.B. 71 and its accompanying lack of accountability measures; the mandate that schools must teach HIV/AIDS education at least once between 7th-12th grade and the failure to do so by a majority of schools surveyed in “Uneven Progress;” and the disconnect between school board politics and state policy. Finally, I will use data collected from interviews with Phyllida Burlingame, Reproductive Justice Policy Director of the ACLU Northern California, and the authors of “Uneven Progress,” Dr. Combellick and Dr. Brindis, to synthesize a

²⁴ “Uneven Progress” p. 3

discussion of sex education policy implementation and evaluation in theory and in practice.

Chapter Two will provide the trajectory of the development of legal standards for sex education and HIV/AIDS prevention education before the passage of S.B. 71. The chapter will then analyze different versions of the bill as it passed through state committees in the Senate and Assembly and was amended several times. Chapter Two will argue that the legislation ultimately produced is woefully inadequate, because the amendment process stripped it of state funding and its potential to unify and strengthen state education practices was diminished. The law is not progressive because it does not necessitate accountability from school districts and the state. I argue that for this reason, the law should not be seen as a model for championing youth sex education.

Chapter Three will examine the recent status of sex education practices in California's public schools using "Uneven Progress" and an extended interview with Burlingame to identify and discuss implementation problems ten years after the passage of S.B. 71. The specific obstacles presented to school districts in the implementation of S.B. 71 are that the legislation was passed without adequate state funding and accountability measures to incentivize compliance.

Chapter Four will highlight the necessity of grassroots civic engagement to ensure the full implementation process of S.B. 71. I will discuss the models of success that have set precedent for community involvement with monitoring the quality of sex education instruction in California's public schools. Finally, this chapter will summarize my findings and ultimately recommend that future sex

education policy should incorporate a framework that incorporates a discussion of sociopolitical consequences rather than just statistics.

The first chapter has presented evidence for why comprehensive sex education is so vital to forming a youth's sexual identity and identified the stakeholders in the contentious debate between comprehensive sex education and abstinence-only sex education. Chapter Two will now analyze the amendment process of S.B. 71 in which the legislation was weakened due to the removal of state mandates.

CHAPTER TWO

Introduction

California's position as a leader in youth sex education was facilitated by the 2003 passage of Senate Bill No. 71. The precedent established by previous sex education and HIV/AIDS prevention education in California provided important context and influence in the creation and passing of this bill. Co-written by the ACLU of Northern California, the state legislature advanced S.B. 71 in an effort to reconcile the conflicts, confusions and competitions between HIV/AIDS prevention education and general sex education.²⁵ It aimed to streamline information for schools, and clarified the process for parental notification and consent for both types of education.

This chapter will provide the trajectory of the development of legal standards for youth health education before the passage of S.B. 71. Then, it will serve to analyze the effects of changes to the language of the bill during the amendment process and the subsequent implications of those changes.

The Law Prior to Senate Bill 71

In August 2003, Phyllida Burlingame published a report in cooperation with the ACLU of Northern California entitled: Sex Education in California Public Schools: Are Students Learning What They Need to Know? This was the first publication in nearly a decade that incorporated any statewide data documenting the status of sex education and HIV/AIDS prevention education in California. The report intended to expose statewide inconsistencies in youth

²⁵ "SB 71 Senate Bill - History." *Official California Legislative Information*.

health education policies. The research found that because no single law governed HIV/AIDS prevention education and sex education programs, sections of the Education Code were difficult for school districts to interpret and implement.²⁶ Burlingame identified several legal inconsistencies and submitted evidence collected from surveys administered to 153 unified districts, representing 47% of all unified districts in the state of California, to suggest that state policies on sexual education needed to be streamlined and codified more coherently. For example, the distinction between sex education and HIV/AIDS prevention education was not clearly defined by law, even though schools were required to follow different requirements for each of the two subjects. In addition, there were different requirements for parental notification and consent policies depending on whether the class was being taught HIV/AIDS prevention education or sex education and whether a teacher or an outside organization instructed the class.²⁷

Before amendments were made to the California Education Code sections 51930-51939, law pertaining to youth sexual education was codified into eleven separate “piecemeal” sections. According to Burlingame, “The law before [S.B.] 71 was schizophrenic, pieced together, and many [different places] in the education code were in conflict.”²⁸ Specifically, there were inconsistencies in the written policies governing sexual education practices within individual school

²⁶ Sex Education in California Public Schools” p. 2

²⁷ “Sex Education in California Public Schools” p. 3

²⁸ Burlingame, Phyllida. Interview. 6 February 2014. Phone.

districts. The laws concerning HIV/AIDS prevention education were most nebulous before the 2003 amendments to the Education Code.²⁹

HIV/IDS Prevention Education

Although it falls under the umbrella of comprehensive sex education topics, HIV/AIDS prevention instruction is deliberately separated from sex education in the Education Code, which delivers a critical aspect of comprehensive sex education without providing the necessary crucial context. The rationale for this separation is primarily budgetary, which will be explored in greater detail in Chapter Three. However, it is important for my analysis in this chapter to make the legal differentiation between HIV/AIDS prevention instruction and sex education because it represents one of the areas that required clarification prior to the passage of SB 71. According to “Sex Education in California Public Schools:”

In total, nearly three-quarters of middle schools (71%) violate the Education Code by omitting to teach about contraception, condom effectiveness or abstinence, all required topics in sex education classes. In order to analyze accurately whether schools are teaching the topics required by law, it is necessary to cross-reference certain topics. For example, the law requires that HIV/AIDS prevention education include instruction on abstinence and condom effectiveness. Therefore, if schools provide instruction on the topic of HIV/AIDS prevention, they must also teach about abstinence and condoms. Similarly, content requirements for sex education apply to classes in which human reproductive organs and their functions are discussed, or in which sexual intercourse is discussed. When classes cover one or both of these topics, they are obligated to cover abstinence, contraception, and condom effectiveness as well.³⁰

²⁹ "SB 71 Senate Bill - History." *Official California Legislative Information*.

³⁰ Sex Education in California Public Schools p. 10

Recalling that local educational agencies may not pick and chose topics to be covered in sex education, the distinction was made between a mandated HIV/AIDS prevention curriculum and a comprehensive sex education that school districts have the opportunity to select. Since 1992, the state of California legally codified its mandate for HIV/AIDS prevention instruction to be administered once in middle school and once in high school. However, school districts were (and still are) given wide latitude to develop the HIV/AIDS programs to meet the needs of their communities. The district purview determines: “which curricula to use, what classes to teach these subjects in, what grades to teach them in, and whether or not to teach sex education at all.”³¹

HIV/AIDS prevention instruction was therefore required by the state (however minimally) prior to the passage of S.B. 71 but there were no unified implementation policies for districts to follow. The piecemeal law provided no guidance for school districts. For example, Burlingame’s survey results found that seven in ten responding school districts had written policies adopted by the school board that govern their sex education and/or HIV/AIDS prevention education programs.³² Schools that had written plans struggled to implement clear practices in accordance with written policies, and school districts without written policies struggled alike. The estimated 30% of sex education programs that were not governed by written district policies are established by administrative decisions often shielded from public scrutiny or are shaped by teachers on an individual basis. According to the report, “the lack of written policies may make it more

³¹ “Sex Education in California Public Schools” p. 6

³² “Sex Education in California Public Schools” p. 18

difficult for parents, community members, and others to understand the program and assess how well it complies with state law.”³³ Evidence from Burlingame’s report on HIV/AIDS prevention instruction demonstrated a desperate need for a cohesive written policy governing HIV/AIDS prevention instruction.

According to Burlingame, the lack of implementation of required HIV/AIDS curriculum illuminates that “schools do not fully understand the Education Code criteria outlining topics that must be addressed in sex education and HIV/AIDS prevention education courses: nearly half (48%) of schools surveyed fail to teach the required topics.”³⁴ Burlingame’s report displayed the need for fully delineated legal parameters concerning youth sex education that gave clear implementation instructions to school districts.

The Formulation of Senate Bill No. 71

Senate Bill No. 71 was introduced on January 17, 2003. Chapter 5.6 of the bill contained the California Comprehensive Sexual Health and HIV/AIDS Prevention Education Act, which was amended five times throughout the year before it was enrolled and ultimately chaptered by the California Secretary of State on October 1, 2003.³⁵ As stated earlier, the ACLU of Northern California co-authored the bill, along with Senator Sheila Kuehl (D) for whom the safety and well-being of children was a legislative priority throughout her service in the Legislature.³⁶ In collaboration with Planned Parenthood, they aimed to craft a law that would

³³ “Sex Education in California Public Schools” p. 18

³⁴ Burlingame, Phyllida. Interview. 6 February 2014. Phone.

³⁵ “Bill Documents Associated with S.B. 71”

³⁶ Legislative Accomplishments: Sheila Kuehl

consolidate, streamline and make consistent various parts of the Education Code that include issues of sex education and HIV/AIDS prevention education so that school administrators were left with a clear framework for implementation.³⁷

The bill was listed under the following “types” of bills: Inactive/Non-Urgency/Non-Appropriations/Majority Vote Required/Non-State-Mandated Local Program/Fiscal/Non-Tax Levy.³⁸ The bill’s classification as “Non-State-Mandated Local Program” will be shown to be consequential, especially when considering the implementation and evaluation of the bill.

Burlingame was a key advisor to the authorship of several sections of the bill due to the ACLU of Northern California’s involvement with the co-writing of the legislation.³⁹ She stated that the original intent of the bill called for comprehensive sex education and medical accuracy to ensure an equal emphasis about pregnancy prevention and prevention of sexually transmitted disease transmission in public school curriculum.⁴⁰ The bill’s intent was not to extend the reach of sex education in public schools because an estimated 85% of school districts in California already provided sexual health education.⁴¹ Rather, S.B. 71 sought to streamline and resolve the existing legal parameters.

An important goal of the bill was to resolve competing and conflicting areas of the existing Education Code which included making a specific distinction

³⁷ “Bill Documents Associated with S.B. 71”

³⁸ “Bill Documents Associated with S.B. 71”

³⁹ Burlingame is the Reproductive Justice Policy Director of the ACLU of Northern California.

⁴⁰ Burlingame, Phyllida . Interview. 6 February 2014. Phone.

⁴¹ “Sex Education in California Public Schools” p. 14

between the curriculum requirements for sex education and HIV/AIDS prevention education and consolidating the parental notification and consent requirements.

Many previously unclear terms included in the piecemeal legislation prior to S.B. 71 were defined clearly for the purposes of statewide clarity. These terms included “age appropriate,”⁴² “comprehensive sexual health education,”⁴³ “HIV/AIDS prevention education,”⁴⁴ “trained instructors”⁴⁵ and “medically accurate.”⁴⁶

The Dilution of S.B. 71

The original version of S.B. 71 that was introduced by Senator Kuehl on January 17, 2003, was notably stronger in its content than the succeeding versions

⁴² “Age appropriate” refers to topics, messages, and teaching methods suitable to particular ages or age groups of children and adolescents, based on developing cognitive, emotional, and behavioral capacity typical for the age or age group. California Education Code Section 51931 (a).

⁴³ “Comprehensive sexual health education” means education regarding human development and sexuality, including education on pregnancy, family planning, and sexually transmitted diseases. California Education Code Section 51931 (b).

⁴⁴ “HIV/AIDS prevention education” means instruction on the nature of HIV/AIDS, methods of transmission, strategies to reduce the risk of human immunodeficiency virus (HIV) infection, and social and public health issues related to HIV/AIDS. For the purposes of this chapter, “HIV/AIDS prevention education” is not comprehensive sexual health education. California Education Code Section 51931 (d).

⁴⁵ “Instructors trained in the appropriate courses” means instructors with knowledge of the most recent medically accurate research on human sexuality, pregnancy, and sexually transmitted diseases. California Education Code Section 51931 (e).

⁴⁶ “Medically accurate” means verified or supported by research conducted in compliance with scientific methods and published in peer-reviewed journals, where appropriate, and recognized as accurate and objective by professional organizations and agencies with expertise in the relevant field, such as the federal Centers for Disease Control and Prevention, the American Public Health Association, the American Academy of Pediatrics, and the American College of Obstetricians and Gynecologists. California Education Code Section 51931 (f).

amended in the Assembly and Senate over the course of the next nine months. It was amended twice in the Senate Committee on Education before it was passed to the Senate Floor and the Senate Rules Committee. It was then amended separately in the Assembly Committee on Education and the Assembly Committee on Appropriations. It was finally voted on and passed by a margin of 47 - 32 the Assembly floor and 24 - 14 on the Senate floor, respectively.⁴⁷

The original thrust of the S.B. 71 contained the promise of significant, progressive change. The strength of the Bill was diluted, however, as it passed from committee to committee for revision. The legislation was weakened in incremental, discernible portions as the modifications added up through the amendment process. The original version of the bill was passed in the Senate Committee on Education and then re-referred to the Committee on Appropriations for amending. The focus on abstinence was reworded from “sex education shall stress the value of abstinence” to “[sex education shall] teach that abstinence from sexual activity is the only certain way to prevent sexually transmitted diseases.” The textual modification concerning the role abstinence plays in California’s sex education made room for the inclusion of information about sexually transmitted diseases and infections. Additionally, the first amendment to existing education code mandated that, “in developing and providing in-service training, a school district **shall** cooperate and collaborate with the School Health Connections Division of teachers of the district who provide comprehensive sexual health

⁴⁷ "Senate Bill No. 71." *Official California Legislative Information*.

education and HIV/AIDS prevention education and with the State Department.”⁴⁸

The first amended version of the bill was actually stronger, not weaker, than the existing education code because it proposed a mandated teacher training. The subsequent amendments tell a different story.

Fiscal Amendments to S.B. 71

On April 22, the chair of the Senate Committee on Education John Vasconcellos submitted a bill analysis to the Senate. There were no staff comments other than those reiterating that the school districts, which provide sexual health education, are *required* to provide in-service training for all school personnel that provide this education, as specified.⁴⁹ After the bill was been re-referred to the Committee on Appropriations, this requirement was changed. This second amendment to the bill was a highly significant fiscal alteration.

The dilution of the bill began with the substitution of just one word in the section addressing mandated teacher training: “shall,” which was then replaced by “may.” Subsequently, the second amendment read: “In developing and providing in-service training, a school district ~~shall~~ *may* cooperate and collaborate with the teachers of the district who provide comprehensive sexual health education and HIV/AIDS prevention education and with the State Department of Education.” Additionally: “In-service training ~~shall~~ *may* be conducted periodically to enable school district personnel to learn new developments in the scientific understanding of sexual health and HIV/AIDS.” The substitution of “shall” for

⁴⁸ Bill Number: SB 71. Amended in Senate March 25, 2003.

⁴⁹ Bill Number: SB 71. Amended in Senate April 22, 2003.

“may” rendered the mandated portion of the bill less impactful because in-service teacher training shifted to the states as a recommendation rather than a mandate. The second amendment clearly facilitated the bill’s categorization as “Non-State Mandated Local Program.”

The result of this amendment was that a school district was not mandated by this legislation to take any particular course of action in regards to the frequency or quality of sex education teacher training. Had “shall” remained in the text of S.B. 71, school districts might have been scrutinized more heavily in their implementation of sex education. The thrust of a bill like S.B. 71 is rendered either powerful or weak by seemingly insignificant changes to its language.

Prior to the third amendment, the Senate Rules Committee submitted an analysis on May 28 expressing the opinion of all members. It read similarly to the analysis submitted by the Senate Committee on Education with the exception of one important substitution, highlighted below:

This bill establishes the California Comprehensive Sexual Health and HIV/AIDS Prevention Education Act. This act revises, streamlines, clarifies, expands upon and deletes primarily redundant or obsolete provisions of current law related to sex and HIV/AIDS prevention education, as specified. Significant provisions of the bill include:

- **Authorizes** school districts which provide sexual health education to also provide in-service training for all school personnel that provide this education, as specified.⁵⁰

Formerly, this bullet point appeared as “**Requires** school districts...” rather than “authorizes.” This change was elicited by the second amendment’s movement from *mandated* (“shall”) teacher training to *recommended* (“may”) teacher training analyzed earlier. It is important to note that the bill was only brought to a vote in the Senate Appropriations Committee *after* the language addressing mandated teacher training had been changed and therefore the state financial responsibility lessened significantly. It is clear that the fiscal impact of S.B. 71 was lessened after it was re-referred to Appropriations.

The third amendment served to “unbundle” sex education and HIV/AIDS prevention instruction as a state mandate. The third amendment to the bill occurred on June 2 and was subsequently passed on to the Assembly for a fourth amendment before the updated bill was brought to a vote before the Assembly Committee on July 7. The bill passed by a margin of 8-3 votes but then was re-referred to the Committee on Appropriations.⁵¹ Sex education and HIV/AIDS prevention education were distinguished as two distinct and separate measures. The amendment removed “comprehensive sex education” from the following:

⁵⁰ “Third Reading.” Senate Rules Committee.

⁵¹ “Senate Bill No. 71.” *Official California Legislative Information*.

- a) A school district ~~shall~~ *may* cooperatively plan and conduct in-service training for all school district personnel that provide ~~comprehensive sexual health education~~ or HIV/AIDS prevention education, through regional planning, joint powers agreements, or contract services.
- b) In developing and providing in-service training, a school district ~~shall~~ *may* cooperate and collaborate with the teachers of the district who provide ~~comprehensive sexual health education and~~ HIV/AIDS prevention education with the State Department of Education.⁵²

This was a strategic measure on behalf of the California state legislature to shoulder less financial responsibility in the implementation of S.B. 71, because if the state had mandated both elements, funds would necessarily be allocated to implement sex education. The state would have to incur the increased costs of updating curriculum, training instructors and ensuring the quality of instruction delivered. As it stands, only HIV/AIDS prevention education is only mandated once in seventh grade and once in high school, and there are minimal associated implementation costs.

Burlingame explained the rationale behind the separation of sex education curriculum & HIV/AIDS curriculum as being “strictly financial.”⁵³ HIV/AIDS prevention education statutes, initiated in the early 1990s in response to the AIDS crisis, were put in the Education Code as mandated curriculum. Students were to

⁵² Bill Number: SB 71. Amended in Senate. June 2, 2003.

⁵³ Burlingame, Phyllida . Interview. 6 February 2014. Phone.

undergo HIV/AIDS prevention instruction once in middle school and once in high school. Even with this type of minimal-requirement mandate, the state has to shoulder the financial cost that school districts incur when they provide instruction. The authors of S.B. 71 collectively decided not to incorporate comprehensive sex education into the mandate due to the financial burden it would place on the state deeming it unfeasible for the state to fund. In 2003, California's budget provided virtually no funding for state reimbursable education mandates.⁵⁴ Burlingame defended the non-incorporation of comprehensive sex education into the mandated HIV/AIDS prevention instruction because it was better to pass consolidated legislation with low fiscal impact than not update the law at all and because the majority of districts already reported teaching sex education even without a mandate.⁵⁵ Burlingame's consideration of feasibility is essential, but I argue that this piece of legislation does not succeed in carrying out its aim because it provided inadequate financial resources to provide its stakeholders with comprehensive sex education and HIV/AIDS prevention instruction.

Addressing Partnership Opportunities for School Districts

The fourth amendment added guidelines for school district partnerships with outside sex education organizations. If a school district elected to offer comprehensive sexual health education in accordance with S.B. 71, whether

⁵⁴ "Major Features of the 2003 California Budget"

⁵⁵ Burlingame, Phyllida . Interview. 6 February 2014. Phone.

taught by school district personnel or outside consultants, the promotion of religious doctrine in the instruction and materials was prohibited.⁵⁶ The inclusion of “outside consultants” gave rise to the possibility of cooperation with agencies having greater resources to adequately instruct youth sexual health education. The use of this opportunity currently remains unclear and calls for greater clarity as well as expanded guidelines concerning the role of outside organizations. The detriments of false sexual health information disseminated by outside consultants due to a lack of state regulation will be explored further in Chapter Four.

Addressing Parent Stakeholders

The fourth amendment importantly included a memorandum speaking to the role of parents in their child’s sexual education experience. This is included in full text below:

“It is the intent of the Legislature to encourage pupils to communicate with their parents or guardians about human sexuality and HIV/AIDS and to respect the rights of parents or guardians to supervise their children’s education on these subjects. The Legislature intends to create a streamlined process to make it easier for parents and guardians to review materials and evaluation tools related to comprehensive sexual health education and HIV/AIDS prevention education, and, if they wish, to excuse their children from participation in all or part of that instruction or evaluation. The Legislature recognizes that while parents and guardians overwhelmingly support medically accurate, comprehensive sex education, parents and guardians have the ultimate responsibility for imparting values regarding human sexuality to their children.”

As evidenced by this memorandum, California law respects parents’ rights to ultimately decide what sexual health information they want their children to receive. This is a fundamental value underlying sex education nationwide, one

⁵⁶ Bill Number: SB 71. Amended in Assembly. June 19, 2003.

that does not necessarily need to be codified and reified by legal standards.

Parents, in many ways, are the penultimate stakeholders.

California Education code before and after the amendments to sections 51930-51939 is careful not to over-extend the authority of school districts so as to eclipse parental decision-making. For example, the Education Code required schools to notify parents as to what will be taught in sex education classes and permits parents to remove their children from this instruction. Burlingame's report yielded overwhelming evidence to support the following: very few parents actually remove students from sex education class. Furthermore, according to the Guttmacher Institute, over 89% of parents in California support the instruction of comprehensive sex education in public schools.⁵⁷

In the state of California, the overwhelming support of comprehensive sex education shared by parents is strong incentive for cohesive policy on sex education, beginning with a standard of "opting-out" rather than "opting-in." The official state opt-out policy, published by the California Safe Schools Coalition, is included in full text below:

Comprehensive sexual health education: This includes instruction regarding human development and sexuality, including education on pregnancy, family planning, and sexually transmitted diseases. California Education Code §§ 51931(b), 51933. If a school chooses to provide such education, parents have the right to notice at the beginning of the school year, an opportunity to review the instructional materials, and an opportunity to request in writing that their children be exempted from such education.⁵⁸

⁵⁷ "Senate Bill No. 71." *Official California Legislative Information*.

⁵⁸ California Education Code §§ 51937, 51938.1

HIV/AIDS prevention education: This includes instruction on the nature of HIV/AIDS, methods of transmission, strategies to reduce the risk of HIV infection, and social and public health issues related to HIV/AIDS. California Education Code §§ 51931(d), 51934. Schools must provide such education at least twice during grades 7-12, and may provide it in other grades. Parents have the right to notice at the beginning of the school year about such education, an opportunity to review the instructional materials, and an opportunity to request in writing that their children be exempted from such education.⁵⁹

“Opting-out” pre-existed S.B. 71 as a standard practice with sex education.⁶⁰ S.B. 71 merely served to streamline the opt-out provision to make it uniform, whereas previously there were parts of the Education Code that required parents to express their affirmative consent to the district granting permission for their child to be taught sex education. According to Burlingame, opting-in acts as a barrier. It creates more bureaucratic red tape. Opting-out more accurately reflects the wishes of parents.⁶¹

After the fourth amendment was re-submitted to the Assembly, the chair of the Assembly Committee on Education Jackie Goldberg submitted a bill analysis. It was the only analysis that contained an argument from the registered opposition to S.B. 71, which included the California Catholic Conference, the California Right to Life Committee, Inc., and the Concerned Women for America coalitions. According to the Concerned Women for America:

“SB 71 would drastically re-write the state's program concerning a sensitive area that involves social mores, personal values, and religious teachings and other aspects that are largely the domain of the home. Students should not be encouraged by schools to consider sexual conduct outside the bond of marriage nor should they be indoctrinated into

⁵⁹ California Education Code §§ 51937, 51938.

⁶⁰ Burlingame, Phyllida . Interview. 6 February 2014. Phone.

⁶¹ Burlingame, Phyllida . Interview. 6 February 2014. Phone.

acceptance of homosexuality, bisexual, and other various types of behavior as healthy or desirable.”⁶²

The inclusion of the argument sustained by the registered opposition may have contributed to the increase in “no” votes when the final and fifth amendment was called to a vote in the Assembly and then the Senate. However, the analysis also recorded the registered support for the legislation, which grew from 30 groups to over 100 groups supporting the passage of S.B. 71 versus the five groups registered in opposition of the legislation. The majority of California citizens support comprehensive sex education legislation and instruction. When there is opposition, it is composed of a very vocal minority.

Addressing Age Minimum Requirements for HIV/AIDS Prevention Instruction

The fifth and final amendment to S.B. 71 specified seventh grade as the year when students should legally be introduced to sex education. The discrete textual changes are included below:

~~Beginning no later than~~ Commencing in grade 7, instruction and materials shall teach that abstinence from sexual intercourse is the only certain way to prevent unintended pregnancy, teach that abstinence from sexual activity is the only certain way to prevent sexually transmitted diseases, and provide information about the value of abstinence while also providing medically accurate information on other methods of preventing pregnancy and sexually transmitted diseases.⁶³

The original construction that read “beginning no later than” gave districts more discretion when implementing the first period of sex education instruction and arguably should not have been changed. “Commencing in grade 7” limits the

⁶² “Revised.” Jackie Goldberg. Assembly Committee on Education.

⁶³ Bill Number: SB 71. Amended in Assembly. September 2, 2003.

flexibility of beginning instruction in the earlier middle school years. Ultimately, the fifth amendment generated minor changes to the existing text. The bulk of the shift in financial mandates occurred in the second and third amendments.

S.B. 71 was then brought to a vote first on the Assembly Floor on September 9, where it passed by a margin of 49 ayes to 32 noes. Finally, in the Senate the bill passed by a margin of 24 ayes to 14 noes on September 11.⁶⁴

Enrolled and Incorporated: October 1, 2003

Any legislation that passes through both the Assembly and the Senate is sent to enrollment for proofreading for consistency before being sent to the Governor for approval. Upon approval by the Governor, the bill is “chaptered” and becomes law January 1st of the following year, unless it contains an urgency clause or specifies in the bill its own effective date.⁶⁵ The amended S.B. 71 passed in the California State Assembly on September 9, 2003 before it passed in the House on September 11, 2003. The bill was then approved by the Governor on October 1 and filed with Secretary of State on October 1, 2003. S.B. 71 was thus legally sanctioned as California Education Code.⁶⁶

Concluding Remarks

The passage of S.B. 71 in 2003 has been a point of pride for California. The legislation is a model for many other states in the nation, and teen pregnancy statistics have recorded a steep decline over the last decade. However, S.B. 71 is

⁶⁴ Votes: Roll Call. Bill Number: SB 71.

⁶⁵ California State Senate.

⁶⁶ Bill Number: SB 71. Chaptered. Introduced October 1, 2003.

policy lacking “stick” of the state and the “carrot” of funding. The considerable difficulties associated with the implementation S.B. 71 demonstrate that it is difficult to generate cooperation or change without incentive.

The original, first draft of S.B. 71 contained a progressive agenda with important fiscal and legal implications. The original draft also included great financial implications: if the state had mandated comprehensive sex education, the state would be responsible for a number of increased costs associated with implementation, updating curriculum and training instructors. Furthermore, the state would be responsible for the breadth of material covered, the quality of teacher training and the quality of instruction delivered.

As delineated in this chapter, the amendments to S.B. 71 demonstrate that the legislative body decided to shift this responsibility from the state level to the local level for implementation. This relieved the state from large financial, bureaucratic and legal burdens yet jeopardized the opportunity for school districts to benefit from a partnership between comprehensive sex education and HIV/AIDS prevention education mandated by the state government. S.B. 71’s original aim to clarify and consolidate existing piecemeal law evolved into a local mandate for the school districts to implement without financial support from the state.

The legislation is problematic in that exemplifies a progressive policy at the state level but is not tied to any incentivizes for the local officials (school districts and local educational agencies) to implement. There is neither adequate

regulation nor funding to fuel an increase in the compliance rates of school districts with S.B. 71. In large part, this is a microcosm of the political arena as a whole. Local officials are driven by incentives. If state authority cannot provide incentives, local constituents are left to pressure officials into compliance. After analyzing the changes to S.B. 71 that occurred after an extensive amendment process, I conclude that it is a piece of legislation passed without adequate funding and accountability measures. For these reasons, S.B. 71 cannot rightfully claim its status as a national model for youth sex education legislation

CHAPTER THREE

Introduction

California is home to more unified school districts than any other state in the nation and thus challenge of implementation and monitoring of state legislation in the realm of public education is immense. As my analysis of the amendment process of S.B. 71 detailed in Chapter Two, the implementation process attached to this particular piece of legislation is markedly decentralized from the state to the local school district level. Chapter Three will now explore the challenges associated with that pattern of devolution. I highlight the two particular obstacles school districts face in pursuit of the correct and full implementation of S.B. 71 as a lack of funding guaranteed by the state, and a lack of accountability measures to incentivize schools to comply with the law.

Firstly, this chapter will examine the role of school districts—seen as the last strongholds of implementation after the state budget crisis defunded outside programs—in implementing comprehensive sex education. This chapter will then explore the disjuncture between what is taught within the curriculum in regards to the standards outlined in the updated California Education Code.

Secondly, this chapter will analyze the implementation guidelines for school districts that S.B. 71 created in the form of a manual. I contend that the opportunities for school districts to successfully implement comprehensive sex education in conjunction with HIV/AIDS prevention education have not been fulfilled due to a lack of incentives. The lack of funding and lack of accountability

measures contribute to the manual's failure to provide a sufficient framework for school districts.

Uneven Progress: Sex Education in California Public Schools

Dr. Combellick and Dr. Brindis conducted the study "Uneven Progress" to be an assessment of sex education in California public schools several years after the passage of S.B. 71. Administered in 2010 and published in 2011, "Uneven Progress" was the first comprehensive survey of sex education in California to describe any changes in school district implementation after S.B. 71. This research was of particular importance, as the 2008 California state budget crisis eroded a network of valuable preventative programs that previously acted as Avenues for sex education alternative to school districts. Due to the defunding of these programs, sex education advocates understood schools to be last strongholds in the implementation of comprehensive sex education.⁶⁷

While the research findings reveal a great deal about the variable progress of teaching sex education to the standards of the S.B. 71, the data was limited. Historically, collecting survey data from school districts has been difficult: Burlingame only gathered data for 60 school districts while 40 remained unresponsive to the survey she distributed in 2003. Similarly, "Uneven Progress" distributed one hundred surveys to the school districts officials "most knowledgeable of the district's policies and practices about sex education" from a random sample of unified school districts throughout the state but the return rate

⁶⁷ "Uneven Progress" p. 1

of the surveys was low.⁶⁸ Survey data from “Uneven Progress” is available from 33 districts; 67 declined assessment, representing just 10% of unified school districts in the state. Combellick and Brindis credit this to the challenges they faced with incentivizing schools to participate. Those that did participate were “particularly motivated to do so and may be qualitatively different in their policies and practices from those who did not choose to participate.”⁶⁹ To that same token, the districts surveyed represent over 400,000 students enrolled in California’s public schools.⁷⁰ Therefore, though the results cannot be used to draw strong conclusions regarding sex education in the entire state of California, it is the only study of its kind in existence and thus serves as an important tool for my assessment of the current state sex education climate.

The results indicate that S.B. 71 has helped to clarify California’s sex education law to a significant degree. Forty seven percent of school districts reported that their sex education and HIV/AIDS prevention education policies had changed considerably since the introduction of new law in 2003.⁷¹ The list below provides a summary of the most striking findings collected from the survey. Most encouragingly:

- All districts (100%, n = 33) reported providing HIV/AIDS prevention education and 97% (n = 32) reported providing sex education in their districts.

⁶⁸ “Uneven Progress” p. 1

⁶⁹ Brindis, Claire and Combellick, Sarah. Interview. 12 November 2013. Phone.

⁷⁰ "Fingertip Facts on Education in California - CalEdFacts."

⁷¹ “Uneven Progress” p. 15

- In 88 % (n = 29) of districts, the class in which sex education was taught was a required class rather than an elective.⁷²

However, as findings from this study show, many schools are out of compliance with the California Education Code updated after the passage of S.B. 71. Most troublingly:

- In 37% of districts, no training was provided for sex education instructors.⁷³ S.B. 71 mandates that HIV/AIDS prevention education shall be taught by instructors trained in the appropriate courses. If school districts elect to teach comprehensive sex education, instructors should also be trained in the appropriate courses. Education Code Section 51931(e) defines “instructors trained in the appropriate courses” as: “instructors with knowledge of the most recent medically accurate research on human sexuality, pregnancy, and STDs.”⁷⁴ Additionally, the CDE receives a \$325,000 grant from the CDC to provide limited statewide leadership for HIV/STD and teen pregnancy prevention.⁷⁵
- 21% of districts instated non-compliant policies, meaning that parents must sign a permission slip for their child to participate in HIV/AIDS prevention education.⁷⁶ S.B. 71 specifically forbids the use of non-compliant, or “opt-in,” policies.

⁷² “Uneven Progress” p. 7

⁷³ “Uneven Progress” p. 18

⁷⁴ California Education Code Section 51931(e)

⁷⁵ CDE: Frequently Asked Questions

⁷⁶ “Uneven Progress” p. 2

- 16% of districts taught that condoms were not an effective means of birth control. This is an inaccurate statement.⁷⁷
- In 1 in 5 districts, birth control was briefly mentioned in curriculum while abstinence was heavily emphasized.⁷⁸ By law, sex education must be comprehensive if school districts elect to teach it.
- 6 out of 10 districts taught about FDA-mandated forms of birth control.⁷⁹ California Education Code requires that curriculum cover **all** FDA-approved methods of birth control.

Specifically speaking to the discrepancies in non-compliant or “opt-out” policies, the discussion in the report indicates that the California Department of Education is partially responsible for the persistence of opt-in policies. S.B. 71 wrote that a parent or guardian must write or sign a letter only if they DO NOT want their child to participate in instruction. The California Department of Education interpreted the implementation of this new law differently than was originally intended: they stated that “opt-in” policies were acceptable for sex education but not for HIV/AIDS prevention education.⁸⁰ As Burlingame explains, opt-in policies create barriers to comprehensive sex education. Opt-out policies more accurately reflect parents’ wishes, as the majority (89%) of parents support comprehensive sex education and HIV/AIDS prevention education in California.

⁷⁷ “Uneven Progress” p. 12

⁷⁸ “Uneven Progress” p. 12

⁷⁹ “Uneven Progress” p. 19

⁸⁰ Burlingame, Phyllida . Interview. 6 February 2014. Phone.

One-third of school districts surveyed also reported having faced challenges in implementing HIV/AIDS prevention and sex education in their schools.⁸¹ These challenges ranged from being confronted by conservative members of their community that opposed the curriculum, to financial challenges associated with implementation. Respondents also identified the biggest influences of their HIV/AIDS prevention and sex education programs as teachers (58%, n = 18), followed by parents (32%, n = 10), and the school board (26%, n = 8). Only one district responded that students influenced their sex education programs.⁸²

Although the report's data is not a large enough sample to make conclusive assessment of the quality of sex education in California on the whole, it is important to consider the evidence at hand. Parents are identified by only one-third of surveyed districts as key stakeholders in sex education programs. In reality, 89% of parents in California have been statistically shown to support comprehensive sex education curriculum. Parents want their children to have access to accurate information and they want it to be imparted by trained, knowledgeable people.⁸³ They are important stakeholders in the realm of sex education, but their expressed opinion is only marginally considered by school districts.

“Uneven Progress” revealed that while 97% of schools administer some variation of comprehensive sex education, the areas of the content of the

⁸¹ Uneven Progress p. 14

⁸² Uneven Progress p. 15

⁸³ Burlingame, Phyllida. Interview. 6 February 2014. Phone.

curriculum did not meet the legal standards of S.B. 71. Therefore, it is not *whether* a school decides to teach comprehensive sex education that is a critical to the implementation of comprehensive education, but rather, *what* the curriculum contains and *how* it is being administered.

Based on the data collected from “Uneven Progress” and the interview conducted with Phyllida Burlingame, school districts can be clearly identified as the biggest point of conflict with respect to implementation of S.B. 71. According to Burlingame:

The big problem is that school administrators find [sex education] hard to deal with. They are scared of it, and they anticipate conflict from the community [parents] that is not often there. Rarely, there is a very vocal minority demanding less comprehensive sex education in a school. The school district is under the impression that it reflects the wishes of the entire community, so they tend to scale back and self-censor. Teachers do the same. Unless the school district is very clear about their policies in robust support, teachers are worried that they will be targets of criticism. The political problem is self-generated by the school districts.⁸⁴

In the interview, Burlingame went on to describe the “spectrum” of districts in California: “there are ones that are willfully defiant of the law and believe they can get away with it. Then, there are those who really do the right thing. We see this in big districts like [Los Angeles] Unified and [San Francisco] Unified. In the middle there are districts that *want* to do the right thing.”⁸⁵ The self-generated problem with school districts and successful implementation is exacerbated by a fundamental lack of guidance, training and information provided by the state.

⁸⁴ Burlingame, Phyllida . Interview. 6 February 2014. Phone.

⁸⁵ Burlingame, Phyllida . Interview. 6 February 2014. Phone.

“Putting it All Together:” California’s Sex Education Manual

An enormous amount of discretion is granted to school districts when implementing the content of Senate Bill No. 71. This inherently complicates California’s progressive legal framework for sex education so that this implementation is not always successful. Currently, the manual for school districts to follow when implementing sex education curriculum is found in: “Putting it All Together: Program Guidelines and Resources for State-Mandated HIV/AIDS Prevention Education in California Middle and High Schools.” Last updated in 2011, the manual was developed by the California Department of Education. It is composed of a series of recommendations for school districts to follow when building a successful HIV/AIDS prevention program. The manual explains that the role of a school board is to uphold district policies as well as ensure compliance with the California Education Code, including HIV/AIDS prevention education (EC51930–51939).⁸⁶

In theory, the manual published by the state is supposed to provide adequate framework for schools to follow when implementing sex education programs, but the manual is no more than a series of *suggestions*. With the exception of several reminders that in accordance to California Education Code that HIV/AIDS prevention instruction is mandated to be taught once in middle school and once in high school, the manual contains no state requirements for local school districts to follow.

⁸⁶ “Putting It All Together” p. 2

The manual recognizes the importance of collaboration between school districts and outside agencies to alleviate district implementation costs. The manual also acknowledges that the school board's budget is the most concrete expression of the board's commitment to the HIV/AIDS prevention program but does not mandate that district funds must be set aside to support adequate coordination, instruction materials and staff training.⁸⁷ The manual merely reminds school districts that: "it is important when developing the program to ensure that sufficient funding exists to support this program within the school district's comprehensive health education plan."⁸⁸ School district budgets are particularly difficult for an outside party to monitor or potentially overhaul. However, the Local Education Agencies (LEAs) have certain reimbursement capabilities that should be better advertised to school districts. Because HIV/AIDS prevention instruction is mandated, LEAs can recover costs associated with:

- Parental notification regarding HIV/AIDS instruction
- Printing and postage for the required notification
- In-service training for both trainer and trainees
- Development of in-service training programs
- Development of curriculum and selection of materials
- Instructional materials
- Planning for HIV/AIDS prevention instruction

⁸⁷ "Putting It All Together" p. 11

⁸⁸ "Putting It All Together" p. 6

- Paying non-classroom teachers who provide HIV/AIDS prevention instruction⁸⁹

Each individual school district’s fiscal office is responsible for submitting reimbursement claims for these activities.⁹⁰ This is a cumbersome process. A school district can reduce their implementation costs by applying to cover personnel and program costs—but again, this process is cumbersome and requires schools to possess a certain amount of financial resources up-front.

Outside Agencies: Funding

The manual repeatedly emphasizes the importance of “interagency collaboration” when implementing sex education programs to expand school districts’ perspective and expertise.⁹¹ Burlingame identified some of the most important outside agencies as state Teen Pregnancy Prevention (TPP) programs. Unfortunately, California’s long and exemplary tradition of support for TPP programs has eroded in recent years. After 2008, state funding for these programs was significantly reduced caused by California’s budget crisis.⁹²

The Male Involvement Program lost all funding in 2008.⁹³ The Community Challenge Grant lost all funding in 2011.⁹⁴ Over a four-year span, the

⁸⁹ “Monitoring Selection Criteria.”

⁹⁰ “Questions and Answers about SB 71.”

⁹¹ “Putting It All Together” p. 6

⁹² Burlingame, Phyllida . Interview. 6 February 2014. Phone.

⁹³ Male Involvement Program (MIP): 25 agencies per year to engage young men in teen pregnancy prevention and reduce absentee fatherhood

Adolescent Family Life program and Information & Education program saw a forty two percent reduction in their funding. The total decline in participants served by these programs is 94%.⁹⁵ In effect, California's commitment to teen pregnancy prevention is obsolete.

According to Burlingame, TPP programs deserve funding because of their tremendous benefits to families, schools and communities alike. TPP programs are needed to maintain the declining trend in teen birth rates. Agencies cannot rely on the private sector alone when collaborating with outside agencies; state funding is required to ensure the long-term sustainability of TPP programs.

Monitoring Sex Education in California Public Schools

Beyond the inadequate framework provided by the manual is the larger policy issue: *monitoring* the legal standards set by S.B. 71. The California Department of Education (CDE) is in charge of regulating the implementation of S.B. 71 in the state's public schools. Their system of monitoring determines whether or not the local education agency is adhering to the requirements for categorical programs. The CDE functions under a system of compliance monitoring. Because schools grades seven through twelve are required to provide HIV/AIDS instruction and train teachers providing that instruction, the HIV/AIDS

⁹⁴ Community Challenge Grant (CCG): 120 agencies per year for agencies to implement teen pregnancy and sexually transmitted infection prevention programs

⁹⁵ Burlingame, Phyllida . Interview. 6 February 2014. Phone.

program is included under the CDE's compliance monitoring program.⁹⁶ The CDE is legally required to monitor the implementation of categorical programs operated by local educational agencies (LEAs).

Every year, LEAs are randomly selected for monitoring to ensure that they are meeting the fiscal and program requirements in State Compensatory Education. HIV/AIDS prevention instruction is legally mandated and thus "compensatory" and eligible for monitoring. Federal Program Monitoring thus is an overall determination of whether the local educational agency is meeting statutory program and fiscal requirements for categorical programs.⁹⁷

In the state of California, there is one state employee in charge of Federal Program Monitoring for state-mandated HIV/AIDS prevention education. Her name is Sharla Smith. Though employed by the California Department of Education, her position is funded by an outside grant. There is no state funding commitment to this position. There are 371 unified school districts in the state. There are thousands of schools and hundreds of thousands of teachers and students.⁹⁸ To reiterate, there is one woman in charge of monitoring the effectiveness of HIV/AIDS prevention curriculum for the entirety of this vast demographic.⁹⁹

Smith's position entails: creating instructional training material and uploads it to the CDE HIV website; providing trainings for county offices of

⁹⁶ "Monitoring Selection Criteria."

⁹⁷ "Monitoring Selection Criteria."

⁹⁸ CalEdFacts

⁹⁹ Interview. Burlingame, Phyllida .6 February 2014. Phone.

education that act as her gateway to the school districts in the county; and heading the HIV/AIDS prevention Federal Program Monitoring wherein she extensively reviews all of the instructional materials, interviews administrators, teachers, and students in a given school district and assesses whether or not instruction meets the requirements of S.B. 71.¹⁰⁰ School districts are selected for online or on-site evaluation based on criterion such as compliance history and academic achievement. Smith then identifies the sub-group of districts that she wants to monitor based on health data such as high rates of STIs.

It is a very labor-intensive position, and she has never completed an evaluation of more than 10 districts in one calendar year. Burlingame referred to this as a “tiny grain of sand in the school districts of California.”¹⁰¹ What’s more, only one school district has ever fully passed this comprehensive audit. As the current rate of completion stands, it seems as if Sharla Smith is burdened with a near impossible, underfunded and thankless task.

Federal Program Monitors cover many subjects. Cohorts of team leaders coordinate the issue areas that they deem require the most monitoring. According to Burlingame, Smith does many fewer reviews for sex education than they do for things like tobacco prevention, etc., which have much more funding and therefore more capacity to do monitoring.¹⁰² In 2014, Smith will not conduct any monitoring of HIV/AIDS prevention education instruction; the terms of the California Department of Education’s grant have changed and she has to

¹⁰⁰ Interview. Burlingame, Phyllida .6 February 2014. Phone.

¹⁰¹ Interview. Burlingame, Phyllida .6 February 2014. Phone.

¹⁰² Interview. Burlingame, Phyllida .6 February 2014. Phone.

primarily focus on other priorities this year.¹⁰³ In effect, schools have no state incentive to comply with S.B. 71 for the calendar year of 2014-2015.

Alternative Instruments for Assessment

The current status of California's Federal Program Monitoring of sex education demonstrates a lack of interest in monitoring the quality of HIV/AIDS prevention education. Other survey instruments seeking data about student health similarly neglect the importance of sexual health. The California Healthy Kids survey has been distributed every fall since 2003, seemingly in conjunction with the introduction of S.B. 71 as law. Additionally, it was mandated that all local education agencies distribute and publicly display the data collected by the California Healthy Kids survey every 2 years. According to their website:

The California Healthy Kids Survey (CHKS) is a powerful tool for use in Grades 5-12 that can help schools and districts accurately identify areas of student and school strengths and weaknesses, and address related needs. It provides a comprehensive, data-driven, decision-making process to guide efforts to improve school climate, learning supports, and engagement, as well as identify and increase the quality of health, prevention, and youth development programs.¹⁰⁴

Though the survey strives to identify the quality of "health, prevention and youth development programs," there is a noticeable absence of questions regarding youth sexual behavior in the "Core Module" of the survey that is distributed uniformly to secondary students. The "Sexual Behavior" questions are supplemental. The "Core Module" instead focuses on tobacco prevention and anti-bullying themes. This is problematic because of the vitality of assessing the

¹⁰³ Interview. Burlingame, Phyllida .6 February 2014. Phone.

¹⁰⁴ California Healthy Kids Resource Center

youth sexual behavior climate in middle schools and high schools. The omission of questions regarding sexual behavior in the core and most widely distributed module eliminates valuable information accountability information from student stakeholders, which widens the gap between sex education law and practice in public school districts.

Concluding Remarks

S.B. 71 was passed without adequate funding or accountability measures. This created a disconnect between policy and implementation that persists today. Evident by the systematic defunding of Teen Pregnancy Programs and the Federal Program Monitoring task force, sex education is not a fiscal priority for the state of California. School districts encounter obstacles to implementing S.B. 71 correctly because they cannot rely on the state for funding nor for guidance from a state employee.

S.B. 71's system of implementation is thus markedly decentralized. This is problematic because data from "Uneven Progress" suggests that school districts often fail to implement the statues of S.B. 71, but do not anticipate consequences for their violation. The responsibility of monitoring the quality of sex education and HIV/AIDS prevention in public schools is shouldered by one state employee. Currently, other issues such as tobacco prevention are being prioritized for state monitoring. The quality of sex education instruction in California's public schools will therefore not be evaluated whatsoever in the remainder of the 2014 calendar school year.

School districts are left to self-police their own adherence to S.B. 71 because the state has no financial or political stick to incentivize the local school districts to comply. There was no dollar amount attached to the implementation of comprehensive sex education by S.B. 71. Furthermore, there is little external incentive for school districts to comply because there are no repercussions for violation. The state is vastly unequipped to deal with the vigilant monitoring of sex education programs in local school districts. The state has neither the fiscal nor regulatory means to track the sex education programs of the 371 unified school districts in the state of California. It is due to the inadequacy of S.B. 71 that school districts have struggled with the successful implementation of sex education.

CHAPTER FOUR

Introduction

While school districts are often regarded as the last strongholds in sex education implementation, they lack the state-backed funding and guidance to consistently and correctly implement comprehensive sex education programs. I argue that it is active community engagement, not school districts, that are the last true stronghold in implementation. Local pressure and grassroots action is the most effective, albeit labor intensive, way to get school districts to comply with sex education law. The constituents of the local officials and public employees must deliver the heat for implementation.

The Guttmacher Institute identified uniformly high levels of parent support for comprehensive regions in the state. Widespread community support for comprehensive sex education can be capitalized upon in order to pressure local authorities into correct implementation of S.B. 71. This chapter recognizes grassroots forces such as litigation and parent committees as essential to the full and correct implementation process of S.B. 71. Finally, this chapter will summarize my findings and ultimately recommend that future sex education policy should incorporate a framework that is driven by sociopolitical consequences rather than statistics.

Model of Success: BACHE

The Bay Area Committee for Healthy Education (BACHE) is an example of a grassroots partnership that began between the ACLU of Northern California and

parents who encountered problematic sex education in their local schools.¹⁰⁵ Burlingame is the steering committee chair of BACHE, which was founded in 2003. The organization provides an online toolkit including fact sheets and checklists for parents. These checklists detail the process of evaluating sex education in local schools. The most important feature of BACHE's toolkit, according to Burlingame, is instructions on how a community can move forward with an advocacy campaign.¹⁰⁶ The organization has worked tirelessly to remove illegal abstinence-only education and ensure the implementation of comprehensive sex education in several Bay Area school districts, including Mount Diablo Unified, Oakland Unified and Fremont Unified School districts. The most extreme outcome of an advocacy campaign is the use of litigation.

The Use of Litigation

Litigation has been an important but rare stick to force a district to comply with California Education Code when standards of sex education are not actualized. *The American Academy of Pediatrics et al. v. Clovis Unified School District* (2012) was the first successful lawsuit in California that was filed by parents and physicians over Clovis Unified's high school abstinence-only-until-marriage program. As it stands, California is the only state in the country that has never accepted federal funding to promote abstinence-only education. In conjunction with the ACLU of Northern California, the plaintiffs in this case were able to successfully demonstrate the unconstitutional violation of students' rights in the

¹⁰⁵ Bay Area Communities for Health Education.

¹⁰⁶ Burlingame, Phyllida . Interview. 6 February 2014. Phone.

quality of sex education students were receiving in Clovis Unified School District.¹⁰⁷ The lawsuit charged that the district violated California law by putting its teenage students' health at risk. Students in Clovis Unified schools were allegedly taught misinformation by outside organizations and denied critical instruction about condoms and contraception.¹⁰⁸

The curriculum endorsed by the defending district is rife with falsities pertaining to sexual health and LGBTQ bias. Their textbook, Lifetime Health, published by Holt, Rinehart and Winston, omits any information about condoms and contraception. The California Department of Education has specifically advised that this textbook provided information not in accordance with legal standards.¹⁰⁹ For example, the textbook lists several ways to prevent STDs as: “respect yourself, get plenty of rest, go out as a group, and practice abstinence.”¹¹⁰ The curriculum teaches that all people should avoid sexual activity until they are married. Additional materials compare a woman who is not a virgin to a dirty shoe. Others suggest that men are unable to stop themselves once they become sexually aroused. Many of the supplemental materials used in Clovis' curriculum violated the education code independently.

For years, parents had appealed to Clovis administration to change the curriculum. A statement by one of the parent petitioners reads: “We can really save lives with comprehensive sex education. The Central Valley has high rates of

¹⁰⁷ American Academy of Pediatrics v. Clovis Unified School District (2012)

¹⁰⁸ American Academy of Pediatrics v. Clovis Unified School District (2012)

¹⁰⁹ “Health Content Standards for California Public Schools”

¹¹⁰ American Academy Pediatrics v. Clovis Unified School District (2012)

STDs and unintended pregnancy.”¹¹¹ Teen birth rates are dropping across the state, but they remain high for rural areas. Fresno County—where Clovis is located—has had one of the highest teen birth rates in the state for over a decade.

Additionally, the rate of STDs among California teens has risen over the last decade.¹¹² In Fresno County, teens account for nearly one third of Chlamydia cases and one quarter of gonorrhea cases. Fresno County also has one of the highest rates in California of Chlamydia infection among 15-24 year olds.¹¹³

These statistics are demonstrative of the central argument of this thesis chapter: there is a history of change in California’s sex education climate but inadequate adherence to the California Education Code has stifled sufficient progress in lowering rates of teen pregnancy and infection for all populations in California.

National Political Agenda: Real Education for Healthy Youth Act

Nationally, there has been limited progress in drafting legislation that federally mandates the instruction of comprehensive sex education. H.R. 725: Real Education for Healthy Youth Act of 2013 is a one such example. This act would require the Secretary of Health and Human Services to award competitive grants to “enable eligible entities to carry out programs that provide adolescents with comprehensive sex education” to:

- 1) Replicate evidence-based sex education programs

¹¹¹ American Academy of Pediatrics v. Clovis Unified School District (2012)

¹¹² STD Local Health Jurisdiction Data. *California Department of Public Health*.

¹¹³ "Fresno County – Chlamydia, Gonorrhea, and P&S Syphilis Rates by Age Group

- 2) Substantially incorporate elements of evidence-based sex education programs or
- 3) Create a demonstration project based on generally accepted characteristics of effective sex education programs.

H.R. 725 would also importantly set forth provisions regarding *evaluation* of such programs. H.R. 725 has the potential for financial impact in that it awards grants to eligible entities to carry out successful sex education programs. These entities are identified first and foremost as school districts. The act would also generate incentive for school districts vying for the grant awards.¹¹⁴

Unfortunately, the bill's progress has remained stagnant since it was introduced and referred to a Committee in February 2013. According to the official federal tracking website for legislation, the bill has a dim prognosis:

- 1% chance of getting past committee
- 0% chance of being enacted.¹¹⁵

In 2011-2013, only 11% of bills made it past committee and only about 3% were enacted.¹¹⁶ Since sex education is not a current priority at the state and local levels, it is therefore unsurprising that H.R. 725 had a promising introduction in Congress but made no traction. Before progress for sex education is achieved at

¹¹⁴ "Real Education for Healthy Youth Act of 2013 (H.R. 725)."

¹¹⁵ "Real Education for Healthy Youth Act of 2013 (H.R. 725)."

¹¹⁶ GovTrack.us

the national level, the state system of implementation and evaluation must be repaired.

Concluding Remarks

The argument that California has made strides in advancing youth health education policy but has become complacent in its implementation practices is evident in state budget cuts. When reflecting on the change California has made since the passage of Senate Bill 71, Burlingame said:

We have not really moved forward, unfortunately. [California's] financial budget problems have created a rollback in states funding for particularly community-based programs that were implementing and often providing the funds for outside agencies to go into the schools. A \$20 million program Community Challenge was defunded in 2013. [This] was a quartet of programs created the mid-1990s under umbrella of teen pregnancy prevention programs at a time when the state really felt that teen pregnancy prevention was a priority given the high rate. There has been a lot of attention paid to California's steepest decline amongst states in reducing teen birth rates, but the problem recedes from its commitment and doesn't provide the funding to support that infrastructure. This causes the potential situation where you're going to rollback that process.¹¹⁷

Recalling Kendall's proposal of a paradigm shift from the current focus on sex education content and public health outcomes to a more relevant emphasis on sociopolitical consequences of sex education approaches, there needs to be a movement away from teen pregnancy rates as the predominant measurement of the success of a given sex education program. According to Burlingame:

There is often a lot of attention paid to an invert of teen pregnancy rates as indicators of success and failure. In fact there is much more that goes into successful teen health education for youth and we should evaluate beyond that to account for youth development, healthy decision making,

¹¹⁷ Burlingame, Phyllida . Interview. 6 February 2014. Phone.

LGBT inclusiveness and STI prevention. **The rate of STIs among California teens has been on the rise over the last decade.**¹¹⁸

Importantly, Burlingame's quote reminds us that pregnancy rates do not account for STI rates in the state. In order to protect a demographic particularly vulnerable to STI transmission—California youth ages 15-25—sex education needs to be factually correct, objective, and must provide information about all FDA-approved methods of preventing pregnancy and sexually transmitted diseases. The discussion of California's relative successes and failures in lowering teen pregnancy rates needs to be expanded to include rates of STI transmission and infection. Incorporating STI statistics more accurately reflects the current health climate for California's youth population.

Complacency around the teen birth rate in California is dangerous. California can no longer afford to be complacent around the issue of teen pregnancy. Teen pregnancy rates have dropped considerably, yet they remain stubbornly high in some areas of the state—for example, the Central Valley. The state claims a history of progressive sex education policy, but tangible progress has not been achieved in over five years. Until the state resolves these disparities in health education it cannot consciously claim its reputation as a national champion of sex education.

The correct, full implementation of S.B. 71 require parents and students to galvanize and demand their local school districts to provide adequate sex education that follows state law. This may result in legal action. Regardless, it

¹¹⁸ Burlingame, Phyllida. Interview. 6 February 2014. Phone.

necessitates grassroots organizing to involve the community in invoking pressure on local officials. In the true spirit of democracy, monitoring sex education requires a civic engagement and an active citizenship to ensure the instruction of quality, comprehensive sex education in California's public schools.

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