

Declaratory Ruling #41
(Cite as 5 D.o.E. Decl. Rul. 11)

June 30, 1989

Dr. C. D. Buchanan
Executive Director
Educational Services Division
West Des Moines Community
School District
1101 Fifth Street
West Des Moines, Iowa 50265

Dear Dr. Buchanan:

On June 1, 1989, you filed a Petition for Declaratory Ruling, through counsel, on behalf of the West Des Moines Community School District. You sought a determination and ruling with respect to interpretations of Iowa Code sections 256.11(2), (3), (4), (6)(j), and section 279.50. In effect, you seek to know the answers to five questions regarding the Human Growth and Development Instruction Act, ch. 1018, 1988 Iowa Acts 15 [hereafter "the Act"]. You have explained that a Declaratory Ruling is sought to help answer questions raised by patrons of your district related to the scope, nature, and extent of the instructional requirements of the Act, as well as the scope, nature, and extent of the requirement for annual information about the curriculum, the notification requirement, and opt-out procedures.

Your questions primarily refer to section 3, subsection 4 of the bill, now codified at Iowa Code section 279.50. That provision reads as follows:

4. . . .

Each school board shall provide instruction in human growth and development including instruction regarding human sexuality, self-esteem, stress management, interpersonal relationships, and acquired immune deficiency syndrome as required in section 256.11, in grades one through twelve. Each school board shall annually provide to a parent or guardian of any pupil enrolled in the school district, information about the human growth and development curriculum used in the pupil's grade level and the procedure for inspecting

the instructional materials prior to their use in the classroom. A pupil shall not be required to take instruction in human growth and development if the pupil's parent or guardian files with the appropriate principal a written request that the pupil be excused from the instruction. Notification that the written request may be made shall be included in the information provided by the school district.

Each school board or merged area school which offers general adult education classes or courses shall periodically offer an instructional program in parenting skills and in human growth and development for parents, guardians, prospective biological and adoptive parents, and foster parents.

Iowa Code §279.50(4)(1989).

The questions you have posed are as follows:

- [1] Does section 279.50(4), unnumbered paragraph 2, require that all instruction involving the areas of self-esteem, stress management, and interpersonal relationships [is] subject to prior parent notification and the opportunity for parents to excuse their children from such instruction? For example, does the school have to provide prior notification when a teacher discusses taking pride in one's work (self-esteem), getting along with others at school (interpersonal relationships) or not getting angry when struck on the playground (stress management)?¹
- [2] Do the requirements of section 279.50, subsection 4, cover the topics in an elementary guidance program, or any other district course, which might include planned or spontaneous discussion, which may include discussion regarding human sexuality, self-esteem, stress management, interpersonal relationships, and acquired immune deficiency syndrome? May parents request to have their child removed from "instruction" in sociology at the high school level when discussion

¹ Although the legislation cited included "human sexuality" and "acquired immune deficiency syndrome," your question did not include those two subject matters. No explanation for the exclusions was offered; I therefore only address those subject areas you cited in your question. However, I have no reason to believe the answers provided would differ with respect to the two omitted subjects.

takes place about "personal responsibility and goal setting"; or from a discussion in the eighth grade social studies class about "sex stereotyping" in a United States history course; or from a fourth grade language arts discussion about "interpersonal relationships"?

- [3] If the answer to the foregoing questions is that such discussion is covered by the provisions of chapter 1018, under what circumstances does a parent have the right to remove their child from the classroom? If the child is removed from the classroom, in a credit bearing course at the high school, must the school district prepare a separate lesson for the child removed? If so, how is this lesson to be delivered? At any level of instruction, when discussion arises from questions received by the teacher from students about any of the topics listed in the law, how is the teacher to respond?
- [4] What constitutes parent notification?
- [5] How does the Department interpret the word "instruction"? Does instruction mean planned courses, units within a course, chapters, subchapters, paragraphs, sentences, questions, or spontaneous discussion in the classroom?

I believe questions one through three are best resolved following a discussion related to question numbered five above. However, as you have asked me to engage in interpretation of statutory language, a review of the general principles that guide me in my attempt to determine the intent of the legislature is appropriate at this time.

The meaning of a statute is a question of law, final construction and interpretation of which is for the Iowa Supreme Court. West Des Moines Educ. Ass'n v. Public Employment Relations Bd., 266 N.W.2d 118 (Iowa 1978). The Court, however, may consider and give weight to the interpretation of a statute by an administrative agency charged with the application of it. Welp v. Iowa Dep't of Revenue, 333 N.W.2d 481 (Iowa 1983). An agency is limited in its construction or interpretation of a statute; the agency cannot either change the legal meaning of a law nor create new law by its interpretation. Burlington Community School Dist. v. Public Employment Relations Bd., 268 N.W.2d 517 (Iowa 1978).

Chapter 4 of the Iowa Code contains many of the rules of statutory construction. These rules include the following:

Words and phrases shall be construed according to the context and the approved usage of the language; but technical words and phrases, and such others as may have acquired a peculiar and appropriate meaning in law, shall be construed according to such meaning.

Iowa Code §4.1(2)(1989).

If a statute is ambiguous, the court, in determining the intent of the legislature, may consider among other matters:

1. The object sought to be attained.
2. The circumstances under which the statute was enacted.
3. The legislative history.
4. The common law or former statutory provisions, including laws upon the same or similar subjects.
5. The consequences of a particular construction.
6. The administrative construction of the statute.
7. The preamble or statement of policy.

Iowa Code §4.6 (1989). Other rules of construction and interpretation are applicable as well. Related statutes are to be read in pari materia (together). Berger v. General United Group, Inc., 268 N.W.2d 630 (Iowa 1978). With those principles established, I will attempt to determine what the legislature had in mind in enacting Senate File 2094.

At the outset it is important to note that two bills were passed in 1988 affecting human growth and development instruction as it relates to accreditation standards in the Code of Iowa. See Human Growth and Development Instruction, ch. 1018§§1.2, 1988 Iowa Acts 15; School Standards, ch. 1262 §2, 1988 Iowa Acts 532-34. The discrepancy in the language of the two bills affecting some of the same Code sections was resolved by the Code Editor. See Code Editor's Note, Iowa Code vol. III at 4828. The 1989 Code of Iowa reflects the fact that the Code Editor determined that S.F. 2278 controls in terms of the statutory language of section 256.11.

The accreditation standards for all public schools and those private schools seeking accreditation are found in Iowa Code section 256.11 and Iowa Administrative Code 281-12. The human growth and development standards required of all accredited schools are as follows:

Pre-kindergarten: (Not required for accreditation; no mention of human growth and development topics.)

Kindergarten: ". . . experiences designed to . . . protect and increase physical well-being with attention given to experiences relating to the development of life skills and human growth and development." Iowa Code §256.11(2)(1989).

Grades 1-6: ("Health" is required to be offered.) "The health curriculum shall include the characteristics of communicable diseases including acquired immune deficiency syndrome." Id. at subsection (3).

"Elementary program, grades 1-6. The following areas shall be taught in grades one through six: English-language arts, social studies, mathematics, science, health, human growth and development, physical education, traffic safety, music and visual art."

" . . . e. Health. Health instruction shall include . . . human sexuality, self-esteem, stress management, and interpersonal relationships; . . . and prevention and control of disease and the characteristics of communicable diseases, including acquired immune deficiency syndrome. Ia. Admin. Code 281-12.5(3),(e).

Grades 7-8: "The following shall be taught in grades seven and eight: . . . science, health, human growth and development, physical education, . . ." Iowa Code §256.11(4)(1989).

"Junior high program, grades 7 and 8. The following shall be taught in grades seven and eight: English - language arts, social studies, mathematics, science, health, human growth and development, physical education"

"e. Health. Health instruction shall include personal health; food and nutrition; environmental health; family life; substance abuse and nonuse, encompassing the effects of alcohol, tobacco, drugs, and poisons on the human body; human sexuality, self-esteem, stress management, and interpersonal relationships; . . . and prevention and control of disease and the characteristics of communicable diseases, including acquired immune deficiency syndrome. Ia. Admin. Code 281-12.5(4), (e).

Grades 9-12: "The minimum program to be offered and taught² for grades nine through twelve is . . . j. One unit of health education which shall include personal health; . . . human growth and development; . . . and prevention and control of diseases, including sexually transmitted diseases and acquired immune deficiency syndrome." Iowa Code §256.11(5)(j) (1989).

"e. Health (one unit). Health instruction shall include personal health; food and nutrition; environmental health; safety and survival skills; consumer health; family life; human growth and development; substance abuse and nonuse; . . . and prevention and control of diseases, including sexually transmitted diseases and acquired immune deficiency syndrome, current crucial health issues, human sexuality, self-esteem, stress management, and interpersonal relationships." Ia.-Admin. Code 281.12.5(5)(e).

Note: The underlined language reflects amendments proposed to departmental rules in the chapter on "General Accreditation Standards" to conform with the changes in law.

² As you know, "offered and taught" does not mean that students are required by law to take the courses. See 281 Ia. Admin. Code 12.5(20). However, a school board has the authority to determine what courses shall be required of pupils for graduation. Iowa Code §280.14 (1989).

Those are the standards, by statute and rule, related to human growth and development topics that apply to accredited schools and school districts. Because the Iowa Department of Education is authorized and empowered to monitor all public schools (and nonpublic schools who choose to become accredited³) for compliance with the accreditation standards set by the General Assembly and the State Board of Education, the Department requires documented evidence from each school seeking accreditation that the standards are being met. See generally Iowa Code §256.11 (1989); Iowa Admin. Code 281-12. All subject matter mandated by statute or rule for accreditation must be taught in accordance with law if a school is to receive or renew its accreditation status. *Id.* at 256.11(10)-(12). Therefore, all accredited schools must include human growth and development and health, as prescribed, in the appropriately designated grade levels and subject areas.

Within the statutory accreditation standards, the General Assembly has used a number of terms and phrases for instructional content: "instruction in . . .," "educational program," "area including . . .," "subjects," "curriculum," "courses," "experiences relating to the development of . . .," and "unit(s) in." Of those, the word "unit" is the only term defined by statute. See Iowa Code §256.11(5)(1989) ("In grades nine through twelve, a unit of credit consists of a course or equivalent related components or partial units taught throughout the academic year.") See also Ia. Admin. Code 281--12.5(18). ("Unit. A unit is a course which meets one of the following criteria: It is taught for at least 200 minutes per week for 36 weeks; it is taught for the equivalent of 120 hours of instruction; or it is an equated requirement as a part of an innovative program filed as prescribed in subrule 12.1(6). A fractional unit shall be calculated in a manner consistent with this standard. Multiple section courses taught at the same time in a single classroom situation by one teacher do not meet this unit definition for the assignment of a unit of credit with the exception that the second and third years of a foreign language may be taught at the same time by one teacher in a single classroom situation each yielding a unit of credit.") The State Board has, by rule, defined other terms. Rule 12.5(16) defines "educational program." Rule 12.5(17) defines "curriculum." The State Board has not defined "instruction in . . .".

In the case of the human growth and development subject matter, the General Assembly apparently chose to require infusion of it into the health curriculum. One unit of health education is required at the ninth through twelfth grade level. Below ninth grade, health can be taught in conjunction with other subjects and need not be offered as a separate course to meet the accreditation standards.

³The statute at issue here, section 279.50, would appear to apply only to public school districts because of its placement in Iowa Code Chapter 279 ("Directors-Powers and Duties") and because the General Assembly refers only to school boards. The sections of the Act that amend the standards in Iowa Code section 256.11 would, however be applicable not only to public school districts but also to those nonpublic schools that seek accreditation. Thus it appears that accredited nonpublic schools must provide instruction in those human growth and development topics in section 256.11, but those schools are not subject to the mandatory notice, inspection, and removal provisions discussed herein.

The method historically employed by the Department to determine compliance with statutory subject matter requirements that are not full "units" is to review a school or district's curriculum guide to locate and identify course objectives that are to be met. In addition, a certified statement is supplied to the Department annually to the effect that a school or school district has met and is in compliance with all standards.

In those instructional areas for which a "unit" is required by statute or rule, including health at the high school level, a school seeking accreditation must prove that the instructor is properly certificated with an endorsement or approval to teach the subject; that the unit appears on the course schedule; that it is taught for a total of at least 40 minutes per day, daily, for a school year; and that course objectives cover the sub-topics of the subject.

Therefore, to answer your fifth question specifically, I reply that an accredited school or school district must plan to meet the human growth and development and health requirements in first through eighth grade and supply evidence, most likely in the form of course objectives and student learning outcomes in the curriculum guide or board policy, that those topics are being taught. See Ia. Admin. Code 281-12.5(14). With respect to the ninth through twelfth grade, human growth and development is to be infused into the health curriculum and must meet the Department's definition of unit.

This does not mean, however, that a school or district is prohibited from addressing human growth and development topics ("human sexuality, self-esteem, stress management, interpersonal relationships, and acquired immune deficiency syndrome," see Iowa Code §279.50(4)) in other courses or as separate courses. The accreditation standards are expressed as minimums.

Of the options you presented in your fifth question ("planned courses, units within a course, chapters, subchapters, paragraphs, sentences, questions, or spontaneous discussion in the classroom"), my answer is as follows. To meet the standards, the health education curriculum should include human growth and development in first through eighth grade in the manner determined by the local board or authorities in charge of a private school.⁴ To meet the requirements of section 279.50 it appears the district would have to provide instruction in the five specific topic areas as determined by the board (upon consideration of the recommendations of the resource committee required by subsection 1 of section 279.50) and is free to add to the instruction as many topics as desired from those listed in a. through k. of subsection 1 of section 279.50.

⁴ A recent memorandum (June 9, 1989) was sent from the Department's Division of Administration and Accreditation to all superintendents, nonpublic school administrators and AEA administrators, recommending infusion of the human growth and development topics. See page 5 of the memorandum.

To meet the accreditation standards for "instruction in" human growth and development for high school, a unit in health containing human growth and development must be provided between ninth and twelfth grades, inclusive. In order to meet the provisions of section 279.50, a district is free to offer courses in addition to health, or to, infuse those concepts in other courses as chapters, subchapters, or otherwise as portions of a course.

Having answered the fifth question in this way, questions one through three are answered quite simply as follows.

1. If the instruction in the delineated areas of the human growth and development curriculum is planned and designed by the district to meet the mandates of the Act and appears in the curriculum objectives of a course or unit as evidence of compliance, the instruction in that course or unit is subject to the notice, review, and removal provisions of Iowa Code section 279.50(4). I do not believe spontaneous discussions that may directly, indirectly, or tangentially relate to the topics would fall under the aegis of the Act unless the teacher has not planned the discussion but undertakes it, nevertheless, with a purpose to circumvent or avoid the notice, inspection, and removal provisions of the Act.
2. The answer to your second question is again yes, to the extent that those topics delineated in the Act are part of a teacher's or counselor's lesson plans and designed to help the district meet the accreditation standards or section 279.50 requirements related to human growth and development.

As your question suggests, it is reasonable to anticipate that in an academic setting class discussions could turn unexpectedly toward some of the human growth and development instructional topics. I do not believe, however, that the General Assembly intended that spontaneous discussions would be governed by the Act's notification and removal requirements.

3. Your third questions depends upon my answer to the first two. In response to your direct question about when a parent's right to request that the student be removed from the classroom is applicable, I reply that such right attaches when the instruction is designed to meet the accreditation standards or the requirements of section 279.50 as determined by the school district.

I envision that personnel in a school district (and/or the resource committee required by the Act) will sit down and review the instructional topics in the human growth and development statute, examine existing curricula to identify whether those topics are currently part of the curriculum (and if so, identify those sections or chapters), and proceed to infuse the remaining instructional topics into the curriculum at the grade levels required by statute. In this manner the school district will have identified the lessons, materials, goals and objectives which are planned for implementation of the standards. Once that is accomplished, the notices can be sent to parents as required by statute.

You have also asked what the school's responsibility is for creating alternative lessons for the student who has been removed from the classroom by a parent exercising the removal option. This issue was not addressed by the General Assembly. I therefore infer that this is an issue best resolved at the local level, utilizing the resource committee's study and recommendations. The issues to be addressed at the local level could then include provisions for providing alternative instruction and how a teacher is to respond when spontaneous questions arise related to human growth and development topics. I do not believe it is necessary that a teacher refuse to respond to such questions if and when they arise because, as you pointed out in your request, some of the human growth and development topics are extremely broad in scope.

The Department has created, assembled, and disseminated a curriculum development guide for human growth and development instruction and included in the curriculum guide is a sample "Excuse Form" or release form that a school or district is free to adopt, modify, or reject. This sample form has a statement to the effect that a parent signing understands that the parent's child "may/shall be required" to complete an alternative lesson or assignment at the discretion of the teacher, or as a matter of policy by the school district. The statement also assures the parent that the child will not be penalized academically for being removed from the class.

The school would, of course, be wise to remember that any alternative lesson could not be directly related to the topic for which the student's release is requested. The removal provisions would have little meaning or effect if, for example, the parent requested that a third-grade child be removed from a lesson on birth control and the school required or even requested the student to independently study, research, or report on methods or reasons for birth control. Classic accommodation actions (which are designed to meet the same student learning outcome through use of alternative materials) would not be applicable in a removal situation. The teacher, or school district by policy, should look to other established objectives for students in that course or grade level that are not part of the objectionable curriculum, and if an alternative lesson is required, it should relate to those neutral goals and topics rather than the specific goals or objectives of the topic at issue.

Finally, whether a teacher, or school district by policy, requires an alternative lesson may depend on the amount of classroom time devoted to the instructional topic for which removal has been exercised. In keeping with fundamental principles of fairness, the student's grade should not be negatively impacted by the removal. If the class is given a writing assignment worth a maximum of five points in the gradebook, it should go without saying that an alternative lesson should be worth five points in the gradebook.

It may be worth noting that the removal provision of section 279.50 is directed to "human growth and development" instruction. According to unnumbered paragraph two of subsection 4, the topic of acquired immune deficiency syndrome (AIDS) is included. Yet AIDS is

also required in the health curriculum at grades one through twelve. It would appear that a parent could not exercise the removal right with respect to AIDS instruction under subsection 279.50(4). But see Iowa Code §§256.11(6), 135H.9 (1989).

4. Your fourth question, and the final one to be addressed, asks what constitutes notification for purposes of compliance with the statute. The law requires that annual notification be provided to all parents or guardians of children enrolled in the district; the notice shall include "information about the human growth and development curriculum used in the pupil's grade level" as well as the procedure for inspecting materials "prior to their use in the classroom." In addition, the notice must include the parent's or guardian's option to request that a student be excused from the instruction. Iowa Code §279.50(4)(1989).

In creating the curriculum development guide, the Department chose not to include a sample notification form. Appendix K of the guide does make several recommendations in the form of "Guidelines for Informing the Public about Human Growth and Development Curriculum," credited to the Kansas Department of Education. The guidelines suggest public meetings be held as one way to inform the parents and guardians of pupils enrolled in the school or the district, and stress that the notice requirements of the statute be followed.

The purpose of a notice and the form it takes is generally held to be fulfilled and sufficient if it is reasonably calculated to apprise the persons to whom it is directed of their rights and responsibilities. Thus, as the statute requires notice to all parents and guardians of enrolled students, and holding a public meeting is no guarantee that each parent or guardian of an enrolled pupil will receive the information, the Department has recommended, at a minimum, that written notice be provided to all parents and guardians. Mailing is the most reliable method to assure receipt of the notice.

Written notice should be sent to every parent or guardian of an enrolled pupil prior to the start of the school year. The notice should include the parental rights created by the Act. If it is known that the parent or guardian of an enrolled pupil does not speak English or does not read, appropriate means must be taken to assure those persons are apprised of their rights.

The Department recommends gathering all human growth and development instructional materials in one room or office for ease of examination, and setting a date or a period of time when inspection can take place. The school might wish to consider establishing times when working parents can examine materials, which may mean opening the office during the evenings for a period of time. In addition, we recommend that the excuse form be available to parents and guardians at that time, and that the form may be taken home and completed there,

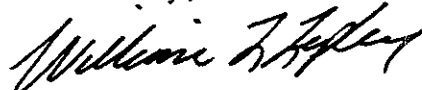
with a reasonable time frame set for returning the form to the school principal.⁵ The notice and forms must be made available to a pupil or the parent or guardian of a pupil upon transferring into a district as well.

In the spirit of openness, human growth and development materials are recommended to be displayed along with other instructional materials at open houses, parent-teacher conferences, registration, "parent nights," etc. It would be wise to include the course and student objectives with the materials.

The Department also recommends that the notice sent be grade and topic specific. I believe the most effective communication comes at the level closest to the child, i.e., from the classroom teacher or building principal.

I appreciate the opportunity that has been provided by your request for declaratory ruling to elaborate on a very important piece of legislation. Parents, guardians, community members, and educational professionals have a unique opportunity to work together to accomplish the worthy goals of educating Iowa students with an eye toward reducing the behaviors that put so many of our youth at risk. I trust that the responses provided have made your implementation process easier.

Sincerely,



William L. Lepley, Ed.D.
Director

WLL:tsn

cc: All "interested parties" as
specified in Petition

⁵ I also believe requests for inspecting materials and removing the child from the classroom must be honored up to and including the day of the instruction in the topic(s). The statutory language regarding inspection of materials is "prior to their use in the classroom."