



May 30, 2023

Dear County and District Superintendents and Charter School Administrators:

## **Guidance on Removal of Instruction or Instructional Materials**

Recently, questions have arisen about the efforts of local governing boards to remove certain instruction or instructional materials. This memo reminds the local educational agencies (LEAs) that interact with these governing boards of (1) students' First Amendment right to receive information, (2) students' right to be free from discrimination, (3) legal requirements for instruction and instructional materials, and (4) legal prohibitions on instruction and instructional materials.

### **California's System**

The state has adopted broad minimum content standards in core subjects and adopts standards-aligned curriculum frameworks to guide local curriculum development and implementation. It is a state priority that LEAs use instructional materials that are aligned with those standards and frameworks, and LEAs must ensure that such materials are available to all students.<sup>1</sup> Local governing boards are responsible for adopting instructional materials and policies for local instruction and learning and making specific curriculum decisions.

As explained below, local governing boards must bear in mind a number of federal and state laws when taking such actions.

### **Students' First Amendment Rights**

Students have the right to receive information. This right may be violated by actions that remove or prohibit materials, ideas, or activities. In an often-cited case, the U.S. Supreme Court stated that a student's First Amendment right to access of information is violated when school officials remove books from a library "simply because they dislike the ideas contained in those books and seek by their removal to 'prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion.'"<sup>2</sup>

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<sup>1</sup> Cal. Educ. Code §§ 52060(d)(1), 52064(b)(1) and 60119.

<sup>2</sup> *Board of Educ., Island Trees Union Free School Dist. No. 26 v. Pico*, 457 U.S. 853, 871-72 (1982).

## **Students' Right to Be Free From Discrimination**

The law prohibits discrimination, harassment, intimidation, and bullying directed against students based on actual or perceived traits or characteristics such as race, sex, gender identity, disability, religion, etc.<sup>3</sup> Local governing boards must be mindful of the effect that proposed actions may have on any and all of their students. Actions that remove or prohibit particular materials, ideas, or activities may have the effect of discriminating against certain students based on protected characteristics. A complaint of discrimination based on a protected characteristic may be filed with an LEA and appealed to the California Department of Education.<sup>4</sup>

## **Required Instruction and Instructional Materials**

California law requires the following with respect to instruction and instructional materials:

There must be comprehensive sexual health instruction at least once in junior high or middle school and at least once in high school that must, among other things, teach pupils about gender, gender expression, and gender identity and explore the harm of negative gender stereotypes and affirmatively recognize that people have different sexual orientations and, when discussing or providing examples of relationships and couples, must be inclusive of same-sex relationships.<sup>5</sup>

Instruction in social sciences must include the roles and contributions of both men and women, members of various races/ethnic groups, lesbian, gay, bisexual, gay, bisexual, and transgender Americans, persons with disabilities, and members of other ethnic and cultural groups to the economic, political, and social development of California and the nation.<sup>6</sup>

Local governing boards must adopt only instructional materials that the board determines accurately portray the cultural and racial diversity of our society, including the contributions of all the groups identified above.<sup>7</sup>

## **Prohibited Instruction and Instructional Materials**

California law prohibits the following with respect to instruction and instructional materials:

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<sup>3</sup> Cal. Educ. Code § 220; 42 U.S.C. §§ 2000d *et seq.*

<sup>4</sup> Cal. Educ. Code § 33315(a)(1)(F).

<sup>5</sup> Cal. Educ. Code §§ 51933-51934

<sup>6</sup> Cal. Educ. Code § 51204.5

<sup>7</sup> Cal. Educ. Code §§ 240, 60040.

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- Instruction must not promote a discriminatory bias on the basis of race or ethnicity, gender, religion, disability, nationality, or sexual orientation or any other protected characteristic.<sup>8</sup>
- A local governing board must not adopt instructional materials that contain any matter reflecting adversely upon persons on the basis of race or ethnicity, gender, religion, disability, nationality, or sexual orientation or because of any other protected characteristic.<sup>9</sup>

It is recommended that this memo be reviewed by superintendents, principals, administrators, and the LEA officer appointed to ensure compliance with the educational equity and nondiscrimination requirements.<sup>10</sup>

### **Additional Information on the California Department of Education Website**

Instructional materials adopted by the California State Board of Education:

<https://www.cde.ca.gov/ci/cr/cf/caadoptinstrmaterials.asp>.

Guidelines for Piloting Instructional Materials:

<https://www.cde.ca.gov/ci/cr/cf/imagen.asp>.

Standards for Evaluating Instructional Materials for Social Content:

<https://www.cde.ca.gov/ci/cr/cf/lc.asp>. Abridged version:

<https://www.cde.ca.gov/ci/cr/cf/abridgedsocialcontent.asp>.

If you have further questions regarding this communication, please contact Dr. Mike Torres, Director, Curriculum Frameworks and Instructional Resources Division, at [mtorres@cde.ca.gov](mailto:mtorres@cde.ca.gov).

Sincerely,

*Cheryl Cotton*

Cheryl Cotton, Deputy Superintendent  
Instruction, Measurement, and Administration Branch

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<sup>8</sup> Cal. Educ. Code § 51500.

<sup>9</sup> Cal. Educ. Code § 51501.

<sup>10</sup> Cal. Educ. Code § 234.1(g); Cal. Educ. Code § 200 et seq.; Title 5, California Code of Regulations, § 4900 et seq.