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The *Truth* About Sexual Orientation and Youth

The American Psychological Association (“APA”) published a primer for use by principals, educators, and school personnel entitled *Just the Facts About Sexual Orientation and Youth*. The material is presented under the guise of a concern for the health and education of all students. However, the proposed curricula fails to warn school districts that they may face liability under state and federal laws for presenting this subject matter without parental knowledge or consent. Failure to notify parents or receive their consent prior to presenting information on sexual orientation will subject school districts to costly litigation.

Parental Rights

Parents have the right to direct the upbringing and education of their children. The United States Supreme Court held, “The child is not the mere creature of the state; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations.” *Pierce v. Society of the Sisters of the Holy Names of Jesus and Mary*, 268 U.S. 510, 535 (1925). The High Court also observed that “a State’s interest in universal education, however highly we rank it, is not totally free from a balancing process when it impinges on fundamental rights and interests, such as those specifically protected by the Free Exercise Clause of the First Amendment . . .” *Wisconsin v. Yoder*, 406 U.S. 205, 214 (1972).

Parents have a constitutionally protected liberty interest under the Fourteenth Amendment and a constitutionally protected religious right under the First Amendment to educate their children. Parents may object to certain educational requirements apart from religious objections by claiming the liberty interest granted under the Fourteenth Amendment. For educational requirements which directly collide with sincerely held religious beliefs, parents may rely upon the First Amendment as an additional protection.

According to a recent study published by the Guttmacher Institute,¹ thirty-eight states and the District of Columbia require school districts to provide the opportunity for parental involvement in sexual education courses. Three states require parental consent in order for their child to participate in a sexual education curriculum which includes instruction on sexually transmitted infections and HIV. Thirty-five states and the District of Columbia allow parents to completely opt their child out of sexual education in school. These state laws are in addition to the rights of parents protected by federal statutory and constitutional law.

The Guttmacher study clearly reflects the holdings of the Supreme Court that recognize a constitutionally protected right of parents to direct the upbringing of their children. The Nation’s highest court, thirty-eight states, and the District of Columbia recognize this right. However, it is not mentioned once in the materials published by the APA.

¹ Guttmacher Institute, *State Policies in Brief: Sex and STI/HIV Education*, August 1, 2008.

School Liability

Glaringly absent from the APA materials is the liability a school may face for teaching this curricula. By permitting sexual orientation education in the classroom and adopting policies by which homosexual behavior is normalized, schools risk liability for resulting physical and emotional harm that may occur. For exposing its students to information on sexual orientation and homosexual behavior, schools may be liable under the tort of negligence if the students subsequently suffer physical or emotional harm.

This year, the Centers for Disease Control published a study stating that one in four teenage girls between the ages of fourteen and nineteen is infected with a sexually transmitted disease, which translates into over three million nationwide. According to the Guttmacher study, twenty-three states require that abstinence is stressed during the sexual education instruction. Further, when teaching on the topics of sexually transmitted infections and HIV specifically, twenty-six states require that abstinence be stressed throughout such a discussion.

This information is missing from the APA materials, yet their pamphlet is presented as *facts*. It is evident that engaging in homosexual behavior has serious consequences, that not only directly affect the actors but also could affect a school for exposing its students to such information.

Sexual Orientation

Finally, the *facts* presented by the APA are extremely misleading regarding sexual orientation and reparative therapy. First, the pamphlet states that “sexual orientation is an enduring emotional, romantic, or sexual attraction that one feels toward men, toward women, or toward both.” However, the Diagnostic and Statistical Manual IV (“DSM”) lists thirty different sexual orientations, with homosexuality and bisexuality as only two out of thirty.

Second, the APA material goes to great lengths to stress that homosexuality is not a mental disorder. Until 1973, the APA itself recognized homosexuality as a mental disorder. Further, gender identity disorder, one of the thirty sexual orientations, is still listed as a mental disorder. However, it is not discussed in the pamphlet.

Finally, the APA *facts* state that sexual orientation cannot be changed and should not be treated with reparative therapy. Not addressing the mental component to sexual orientation has led to physical mutilation and even the administration of hormone-blocking drugs to children as young as seven years old, both in an effort to alter an individual’s sexual identity.

Conclusion

Just the Facts About Sexual Orientation and Youth is not only inaccurate, but it is also misleading in many respects. School districts presenting such material run the serious risk of liability under both state and federal law. By not including information about parental rights, school liability, and sexual orientation in its entirety, the APA is pushing public schools into costly litigation and doing a disservice to the Nation’s youth and their parents.