

Sex Education: Rights and Responsibilities in Michigan Law

A guide for parents,
school boards, and educators

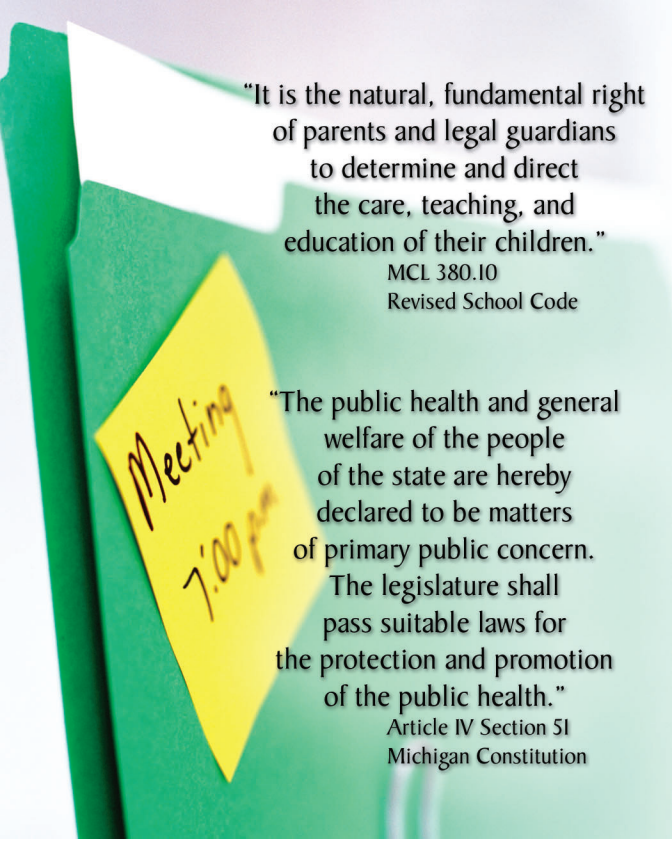


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*MCL 380.10
REVISED School Code*

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*Article IV
Section 51*



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Article IV Section 51

Michigan Constitution

Michigan law strikes a proper balance between rights and responsibilities when it comes to sex education. First, the law recognizes the fundamental right of parents to shape a district’s sex education curriculum and determine whether or not their child participates in the program. Second, in promoting the public health and general welfare, the law acknowledges that abstinence is the preferred method of preventing physical, emotional, social, and financial costs associated with teen sex. Third, without abridging the rights of parents or the constitutional obligations of the state, the law allows local districts to decide whether or not to teach sex education, the specific content and the method of delivery. It is our hope that this guide will help you understand how Michigan law has successfully balanced these rights and responsibilities.

Common Questions Regarding Sex Education

Q Are school districts required to teach sex education and about HIV/AIDS?

A School districts in Michigan are not required by law to teach sex education. Each district must decide whether or not sex education will be taught and in what grades. While some schools incorporate sex education materials in required courses, such as biology or physical education, the actual sex education class or course (defined as a series of sex education classes) offered by a school district must be an elective and cannot be required for graduation. [380.1507 (2); 388.1766 (1)(a) and (1)(b)] No person who is excused from attending a sex education class shall be penalized or suffer a loss of credit. (380.1506)

However, Michigan law does require that schools teach the primary modes of transmission and methods of protection against dangerous communicable diseases, including HIV/AIDS. In 1988, Attorney General Frank Kelley ruled that such instruction does not necessarily require the teaching of sex education. (See Opinion #6521 of 1988.)

Q How can I know what is being taught to my child? Can my child be excused from HIV/AIDS and sex education programs?

A Michigan law requires that school districts notify parents before reproductive health (sex education) material is taught to their children. The law also requires the school districts to give the parents reasonable opportunity to review all material prior to its use. [380.1507 (3)] Parents are also able to observe the actual instruction. [388.1766a (1)] If a parent objects to the material or the instruction in writing, the child shall be excused from the class without penalty.

Lessons on HIV/AIDS are slightly different. If the instruction is limited to teaching about communicable diseases and does not include sex education material, a parent can excuse a child for religious reasons. MCL 380.1170 (3) states: "A child upon

the written statement of parent or guardian that instruction in the characteristics or symptoms of disease is in conflict with his or her sincerely held religious beliefs shall be excused from attending classes where such instruction is being given and no penalties as to credit or graduation shall result therefrom."

Q What if a district wants to conduct an assembly regarding reproductive health?

A For purposes of sex education or reproductive health, assemblies are defined as classes, and schools must comply with the same requirements. Similarly, parents have the same right to be notified about assemblies and to opt their child out of an assembly that addresses reproductive health issues. [380.1507 (9) (a)]

Q When can a child be opted out of sex education and what alternative must a school provide?

A At any point prior to a sex education class or assembly, a parent may request that their child be excused from that instruction. If the parent submits a "continuing written notice," the school cannot enroll that child in such a class until the parent submits written authorization for enrollment. (380.1507a) Michigan law does not direct schools how to handle children who opt out of sex education classes. A district will have to establish reasonable accommodations, supervision, and activities if the child remains at the school. Alternatively, a district may establish a release policy for the child to remain at home.

Q Can parents help develop a school district's sex education program?

A State law requires districts to establish a sex education advisory board. At least one-half of the members on the sex education advisory board must be parents and one of the parents must co-chair the board. [380.1507 (5)] The school district's board of education is responsible for determining the number and terms of advisory board members and establishing a process to appoint parents to the board. The first step in the process is to let a member of your board of education or school

administration know of your interest in serving on the sex education advisory board.

Q Are schools required to give equal time to the “safer sex” message and abstinence? How much local control do districts have in shaping a sex education program?

A State law requires districts that choose to teach sex education to stress abstinence as a “responsible and effective method” for avoiding pregnancy and STD’s and as a “positive life-style for unmarried young people.” [380.1169 (1)] While there is no requirement to give equal time to “safer sex,” districts may choose to teach risk reduction strategies (safer sex). [380.1507b (3)] By law, each district must establish a sex education advisory board to help shape the sex education program to be offered in that district. [380.1507 (5)] The advisory board must establish program goals and objectives that “take into consideration the school district’s needs, demographics, and trends.” [380.1507 (5)(a) and (b)] With the advisory board’s advice, the local school board then formally adopts the district’s sex education curriculum.

Q Can schools distribute contraceptives if they choose to teach about risk reduction?

A State law prohibits schools from distributing family planning drugs or devices in a public school or on public school property. [380.1507 (7)] A school that violates this provision will forfeit 5% of its state aid. (388.1766)

Q Are school districts required to open the advisory board meetings to the public?

A Sex education advisory boards are not subject to the Open Meetings Act because the committee does not set policy; it only advises the school board on policy. Therefore, while most school districts make sex education advisory board meetings open to the public, they are not required to do so.

Q Are schools required to teach about criminal sexual conduct?

A Several sexual activities are misdemeanors or felonies in the state of Michigan. If a district chooses to teach sex education, then the district must “ensure that students are not taught in a way that condones the violation of the laws of this state pertaining to sexual activity.” [380.1507b (2)(e)] A teacher will need to know what the laws are in order to avoid teaching anything contrary to them, but they do not need to actually teach the laws to the students. One exception is that districts which choose to teach sex education are required to inform students in an age-appropriate way that it is illegal to engage in sex with an individual under the age of 16 and that conviction of such an act can result in imprisonment and inclusion on the state’s sex offender registry. [380.1507b (2)(k)]

Q What happens if a parent believes the school district did not follow the law?

A First, the parent should discuss their concern with the district superintendent in order to learn as much as possible about the situation. However, for some violations of the law, a parent may file a complaint with a local school district. The district then has 30 days to investigate the complaint and take corrective action. If the district fails to act or denies a violation occurred, a parent who still believes the law was violated can file an appeal with the intermediate school district. Appealing to the Michigan Department of Education is the third and final step in the process. (388.1766a) 🖋️



Michigan Law

Governing Sex Education

Portions of this section have been highlighted with bold and underlined type to emphasize important aspects of the law.

380.1169

(1) The principal modes by which dangerous communicable diseases, including, but not limited to, human immunodeficiency virus infection and acquired immunodeficiency syndrome, are spread and the best methods for the restriction and prevention of these diseases shall be taught in every public school in this state. Subject to subsection (3) and section 1507b, **the teaching under this section shall stress that abstinence from sex is a responsible and effective method for restriction and prevention of these diseases and is a positive life-style for unmarried young people.**

(2) Except for licensed health care professionals who have received training on human immunodeficiency virus infection and acquired immunodeficiency syndrome, each person who teaches K to 12 pupils about human immunodeficiency virus infection and acquired immunodeficiency syndrome pursuant to subsection (1) shall have training in human immunodeficiency virus infection and acquired immunodeficiency syndrome education for young people. The superintendent of public instruction, in cooperation with the department of public health, shall train trainers to provide the teacher training required by this subsection and shall provide for the development and distribution to school districts of medically accurate material on the teaching of human immunodeficiency virus infection and acquired immunodeficiency syndrome to young people.

(3) The choice of curricula to be used for human immunodeficiency virus infection and acquired immunodeficiency syndrome education required to be taught under subsection (1) shall be approved by the appropriate school board and implemented in the school setting not later than October 1, 1990. Before adopting any revisions to the curriculum implemented under this section, including, but not



limited to, revisions to provide for the teaching of abstinence from sex as a responsible method for restriction and prevention of disease, **a school board shall hold at least 2 public hearings on the proposed revisions.** The hearings shall be held at least 1 week apart and public notice of the hearings shall be given in the manner required under section 1201 for board meetings. A public hearing held pursuant to this section may be held in conjunction with a public hearing held pursuant to section 1507.

380.1506

(1) A program of instruction in reproductive health shall be supervised by a registered physician, a registered nurse, or other person certified by the state board as qualified. Upon the written request of a pupil or the pupil's parent or guardian, a pupil shall be excused, without penalty or loss of aca-

demic credit, from attending classes in which the subject of reproductive health is under discussion.

(2) As used in subsection (1) and sections 1507 and 1508, "reproductive health" means that state of an individual's well-being which involves the reproductive system and its physiological, psychological, and endocrinological functions.

380.1507

(1) The board of a school district may engage qualified instructors and provide facilities and equipment for instruction in sex education, including family planning, human sexuality, and the emotional, physical, psychological, hygienic, economic, and social aspects of family life. Instruction may also include the subjects of reproductive health and the recognition, prevention, and treatment of sexually transmitted disease. **Subject to subsection (7) and**



section 1507b, the instruction described in this subsection shall stress that abstinence from sex is a responsible and effective method of preventing unplanned or out-of-wedlock pregnancy and sexually transmitted disease and is a positive life-style for unmarried young people.

(2) The class described in subsection (1) shall be elective and not a requirement for graduation.

(3) A pupil shall not be enrolled in a class in which the subjects of family planning or reproductive health are discussed unless the pupil's parent or guardian is notified in advance of the course and the content of the course, is given a prior opportunity to review the materials to be used in the course and is notified in advance of his or her right to have the pupil excused from the class. The state board shall determine the form and content of the notice required in this subsection.

(4) Upon the written request of a pupil or the pupil's parent or legal guardian, a pupil shall be excused, without penalty or loss of academic credit, from attending a class described in subsection (1).

(5) A school district that provides a class as permitted by subsection (1) shall offer the instruction by teachers qualified to teach health education.

A school district shall not offer this instruction unless a sex education advisory board is established by the board of the school district. The board of a school district shall determine terms of service for the sex education advisory board, the number of members to serve on the advisory board, and a membership selection process that reasonably reflects the school district population, and shall appoint 2 co-chairs for the advisory board, at least 1 of whom is a parent of a child attending a school operated by the school district. At least 1/2 of the members of the sex education advisory board shall be parents who have a child attending a school operated by the school district, and a majority of these parent members shall be individuals who are not employed by a school district.

The board of a school district shall include pupils of the school district, educators, local clergy, and community health professionals on the sex education advisory board. Written or electronic notice of a sex education advisory board meeting shall be sent to each member at least 2 weeks before the date of the

meeting. The advisory board shall do all of the following:

(a) Establish program goals and objectives for pupil knowledge and skills that are likely to reduce the rates of sex, pregnancy, and sexually transmitted diseases. This subdivision does not prohibit a school district from establishing additional program goals and objectives that are not contrary to this section, section 1169, or section 1507b.



(b) Review the materials and methods of instruction used and make recommendations to the board of the school district for implementation. The advisory board shall take into consideration the school district's needs, demographics, and trends, including, but not limited to, teenage pregnancy rates, sexually transmitted disease rates, and incidents of student sexual violence and harassment.

(c) **At least once every 2 years, evaluate, measure, and report the attainment of program goals and objectives established under subdivision (a). The board of a school district shall make the resulting report available to parents in the school district.**

(6) Before adopting any revisions in the materials or methods used in instruction under this section, including, but not limited to, revisions to provide for the teaching of abstinence from sex as a method of preventing unplanned or out-of-wedlock pregnancy and sexually transmitted disease, the board of a school district shall hold at least 2 public hearings on the proposed revisions. The hearings shall be held at least 1 week apart and public notice of the hearings shall be given in the manner required under section 1201 for board meetings. A public hearing

held pursuant to this section may be held in conjunction with a public hearing held pursuant to section 1169.

(7) **A person shall not dispense or otherwise distribute in a public school or on public school property a family planning drug or device.**

(8) As used in this section, "family planning" means the use of a range of methods of fertility regulation to help individuals or couples avoid unplanned pregnancies; bring about wanted births; regulate the intervals between pregnancies; and plan the time at which births occur in relation to the age of parents. It may include the study of fetology. It may include marital and genetic information. **Clinical abortion shall not be considered a method of family planning, nor shall abortion be taught as a method of reproductive health.**

(9) As used in this section and sections 1506 and 1507a:

(a) "Class" means an instructional period of limited duration within a course of instruction and includes an assembly or small group presentation.

(b) "Course" means a series of classes linked by a common subject matter.



380.1507a

If a parent or legal guardian of a pupil files with the public school in which the pupil is enrolled a continuing written notice that the pupil is to be excused from a class described in section 1507, the pupil shall not be enrolled in a class described in section 1507 unless the parent or legal guardian submits a written authorization for that enrollment.

380.1507b

(1) Instruction under section 1507 in sex education and instruction under section 1169 on human immunodeficiency virus infection and acquired immunodeficiency syndrome shall emphasize that abstinence from sex is a positive life-style for unmarried young people because abstinence is the only protection that is 100% effective against unplanned pregnancy, sexually transmitted disease, and sexually transmitted human immunodeficiency virus infection and acquired immunodeficiency syndrome.

(2) Material and instruction in the sex education curriculum under section 1507 that discusses sex shall be age-appropriate, shall not be medically inaccurate, and shall do at least all of the following:

(a) Discuss the benefits of abstaining from sex until marriage and the benefits of ceasing sex if a pupil is sexually active.

(b) Include a discussion of the possible emotional, economic, and legal consequences of sex.

(c) Stress that unplanned pregnancy and sexually transmitted diseases are serious possibilities of sex that are not fully preventable except by abstinence.

(d) Advise pupils of the laws pertaining to their responsibility as parents to children born in and out of wedlock.

(e) Ensure that pupils are not taught in a way that condones the violation of the laws of this state pertaining to sexual activity, including, but not limited to, sections 158, 335a, 338, 338a, 338b, and 520b to 520e of the Michigan penal code, 1931 PA 328, MCL 750.158, 750.335a, 750.338, 750.338a, 750.338b, and 750.520b to 750.520e.

(f) Teach pupils how to say "no" to sexual advances and that it is wrong to take advantage of, harass, or exploit another person sexually.

(g) Teach refusal skills and encourage pupils to resist pressure to engage in risky behavior.

(h) Teach that the pupil has the power to control personal behavior. Pupils shall be taught to base their actions on reasoning, self-discipline, a sense of responsibility, self-control, and ethical considerations such as respect for self and others.

(i) Provide instruction on healthy dating relationships and on how to set limits and recognize a dangerous environment.

(j) Provide information for pupils about how young parents can learn more about adoption services and about the provisions of the safe delivery of newborns law, chapter XII of the probate code of 1939, 1939 PA 288, MCL 712.1 to 712.20.

(k) Include information clearly informing pupils that having sex or sexual contact with an individual under the age of 16 is a crime punishable by imprisonment and that 1 of the other results of being convicted of this crime is to be listed on the sex offender registry on the Internet for up to 25 years.

(3) This section does not prohibit a public school from offering sex education with behavioral risk reduction strategies, as defined by law, that are not 100% effective against unplanned pregnancy, sexually transmitted disease, and sexually transmitted human immunodeficiency virus infection and acquired immunodeficiency syndrome.

388.1766

A district in which a school official, member of a board, or other person dispenses or otherwise distributes a family planning drug or device in a public school in violation of section 1507 of the revised school code, being section 380.1507 of the Michigan Compiled Laws, dispenses prescriptions for any family planning drug, or makes referrals for abortions shall forfeit 5% of its total state aid appropriation.

388.1766a

(1) In order to avoid forfeiture of state aid under subsection (2), the board of a district or intermediate district providing reproductive health or other sex education instruction under section 1169, 1506, or 1507 of the revised school code, MCL 380.1169, 380.1506, and 380.1507, or under any other provision of law, shall ensure that all of the following are met:

(a) That the district or intermediate district does not provide any of the instruction to a pupil who is less than 18 years of age unless the district or intermediate district **notifies the pupil's parent or legal guardian in advance of the instruction and the content of the instruction, gives the pupil's parent or legal guardian a prior opportunity to**

review the materials to be used in the instruction, allows the pupil's parent or legal guardian to observe the instruction, and notifies the pupil's parent or legal guardian in advance of his or her rights to observe the instruction and to have the pupil excused from the instruction.

(b) That, upon the written request of a pupil's parent or legal guardian or of a pupil if the pupil is at least age 18, the pupil shall be excused, without penalty or loss of academic credit, from attending class sessions in which the instruction is provided. ✎

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Michigan Family Forum's Core Values

The family is the fundamental institution in a civil society.

Healthy, lifelong marriages are beneficial to adults and offer the best environment in which to raise children and care for our elders.

The involvement of responsible fathers is essential to the economic, emotional, and social health of our children.

Our children need the protection of stable families and a healthy understanding of human sexuality.

Our elders deserve to have security and care provided by loving family members in a comfortable home environment.

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