

**RESOLUTION OF THE BOARD OF EDUCATION
ORANGE COUNTY, CALIFORNIA**

**Resolution to establish
A Public Forum-California Healthy Youth Act (CHYA)
Submitted by Ken Williams**

Whereas, the California Healthy Youth Act (CHYA), requires school districts in California to provide students with comprehensive sexual health education, at least once in high school and once in middle school; and

Whereas, California Education Code 51933, gives guidelines on implementation of sex education programs and states all “*instruction and materials are age appropriate.... factually and medically correct and objective*”; and

Whereas, the California Healthy Youth Act (CHYA) was passed by the California legislature and is state law that took effect January 01, 2016; and CHYA modifies the previously existing California Comprehensive Sexual Health and HIV/AIDS Prevention Education Act (passed in 2003); and

Whereas, Article 4. Section 13. Section 51937 of the CHYA states, “*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 prevention education, and, if they wish, to excuse their children from participation in all or part of that instruction or evaluation....and the legislature recognizes that while parents and guardians overwhelmingly support medically accurate, comprehensive or abstinence oriented sex education, parents and guardians have the ultimate responsibility for imparting values regarding human sexuality to their children*”; and

Whereas, the Orange County Board of Education (OCBE) has received from Tyler and Bursch, LLP (law firm), and Nada Higuera, from the same law firm, a three (3) page memo¹ dated June 5, 2018 regarding Article 4. Section 14. Section 51938 of the CHYA that states, “*A parent or guardian of a pupil has the right to excuse his or her child from all or part of comprehensive sexual health education, HIV prevention education, and assessments related to that education*”; and

Whereas, in the above referenced letter from said law firm, the Orange County Board of Education (OCBE) was reminded and also recognizes previous U.S. Supreme Court and California courts and legislative intent, regarding certain rulings recognizing parents possess a fundamental right to direct the upbringing and education of their children (*Troxel v. Granville*, 530 U.S. 57, 65 (2000); *In re Marriage of Harris*, 34 Cal. 4th 210, 223 (2004); and

Whereas, the California legislature has accordingly recognized that “*parents and guardians have the ultimate responsibility for impacting values regarding human sexuality to their children*” (Cal. Educ. Code § 51937); and

Whereas, the OCBE upholds that principle that students do not “*shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.*” (*Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 506 (1969)). As a result, students cannot be compelled to engage in expression with which they disagree; and

Whereas, this board upholds traditional government and community standards and believes government and/or their institutions or public schools cannot command students to use words, pronouns, or engage in other expression that conflicts with their religious values and beliefs; and the OCBE desires to uphold the constitutionality of current law all lawful state laws; and

¹ See attached memo dated June 05, 2018 from Tyler and Bursch, LLP

Whereas, the OCBE desires to follow all state laws, and that all schools follow anti-bullying principles, and that all schools remain safe places for all students. Also, the OCBE desires that all students are treated with dignity and respect, regardless of ethnic background, gender, creed, race, religion, and sexual orientation; and

Whereas, community members, leaders, parents, and many people of the Orange County Community attended earlier OCBE publicly held meetings, and expressed deep concerns that scientific and medical evidence and facts be presented in sex education curriculums; and the interpretation and implementation of the CHYA may be offensive.; and

Whereas, the Orange County Board of Education and the Orange County Superintendent of Education are aware through public input at board meetings of public and parental support, as well as opposition to proposed state approved sex education curriculums and the CHYA at the April, May, and June 2018 meetings. The OCBE heard public comments from constituents articulating their concerns about CHYA who supported and opposed the law. These references are found in the transcripts publically documented from the April, May, and June 2018 Orange County Board of Education meetings; and

Whereas, at a June 6th OCBE meeting a representative from the American Civil Liberties Union (ACLU) spoke and iterated certain statements and declarations conflicting above referenced memo from Nada Higuera, thus causing perplexity and controversy in implementing the CHYA at the Orange County Department of Education (OCDE); and

Whereas, the OCBE desires to: 1) Learn more evidence-based and scientifically-based health and sexual education facts, 2) Further evaluate and obtain knowledge of CHYA and associated recommended state sexual education curriculums, 3) Understand the legal ramifications as to the constitutional rights of parents and students, 4) Demonstrate the Orange County Board of Education due diligence in obtaining additional information and knowledge; and

Whereas, in our rich American history filled with love of country, patriotism, and fairness to all, public forums and town hall meetings have been enshrined in our American history as one of the finest approaches for transparency, public dialogue and input on public policy and governance, and

Therefore, the OCBE will hold a special evening meeting in September, 2018 to obtain additional evidence and facts from state officials and experts on implementation of the CHYA. The meeting will use a similar format in regards to fairness, civility, and equal time assigned to both sides of the CHYA issue. It will follow previous board precedence, carefully created procedures and protocols established for community public forums the OCBE has used in previous years; and

Therefore, this special board meeting or public forum will be entitled, *The California Healthy Youth Act-A Public Forum*. The public meeting will be held at the OCDE board room and will invite state experts and individuals with expertise on the subject matter to provide testimony, give evidence, and offer critical information that will be of legal and academic value to the board. The invited experts will be evenly divided between advocates and dissenters of the CHYA similar to previous public forums.

AYES: Williams, Sparks, Barke

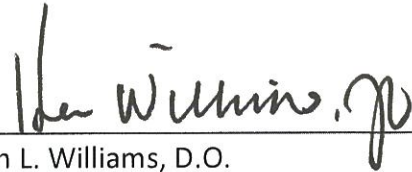
NOES: Bedell

ABSENT: Gomez

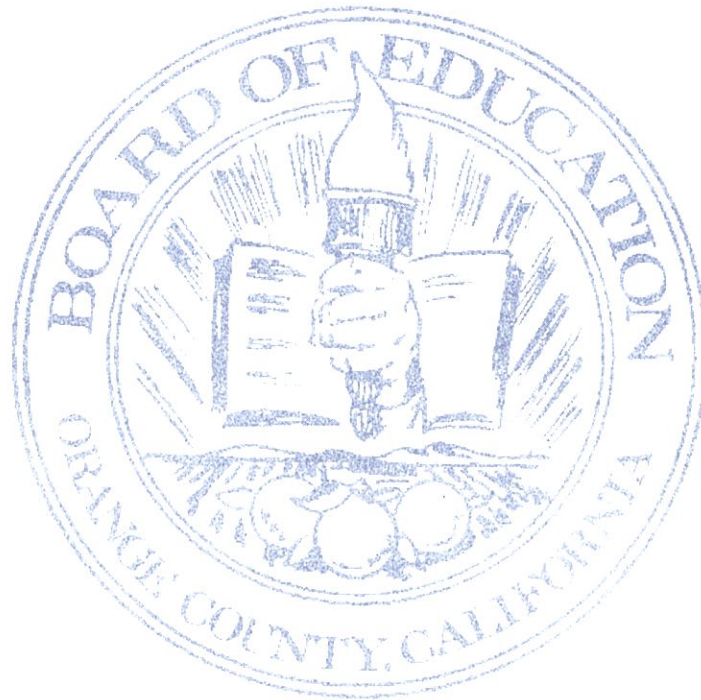
STATE OF CALIFORNIA, COUNTY OF ORANGE

I, **Ken L. Williams, D.O.**, President of the Board of Education of Orange County, California, hereby certify that the foregoing Resolution was duly and regularly adopted by the said Board at a regular meeting thereof held on the eleventh day of July 2018 and passed by a vote of 3-1.

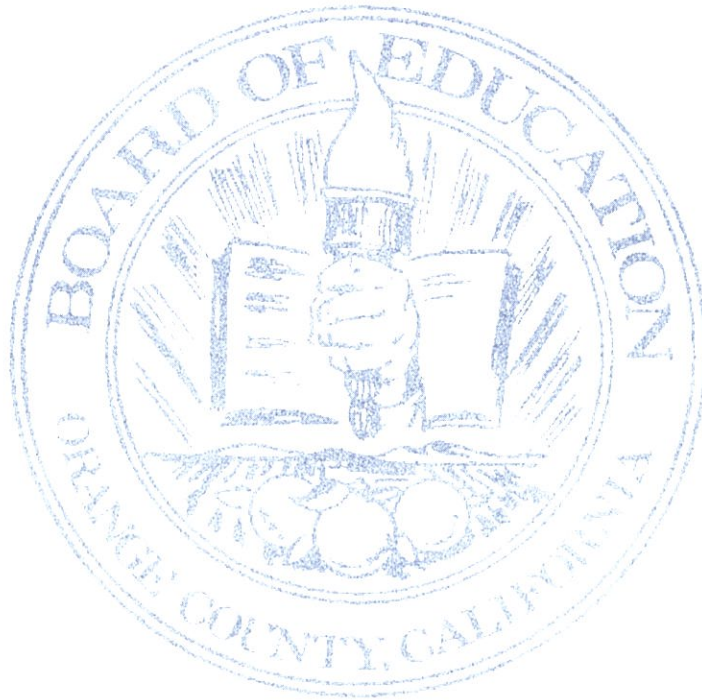
IN WITNESS THEREOF, I have hereunto set my hand and seal this eleventh day of July 2018.



Ken L. Williams, D.O.
Orange County Board of Education



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June 5, 2018

VIA ELECTRONIC MAIL AND HAND DELIVERY

Orange County Department of Education Board Members
c/o Dr. Ken Williams
200 Kalmus Drive
Costa Mesa, CA 92626

Re: Proposed Resolution – “Parental and Student Rights- California Healthy Youth Act and Comprehensive Sex Education”

Dear Board Members:

I reviewed the legality of the Proposed Resolution drafted by Dr. Ken William entitled “Parental and Student Rights- California Healthy Youth Act and Comprehensive Sex Education.” **The Resolution is fully compliant with California law and would provide robust protections for parental rights.** Our law firm is willing to provide further legal guidance and if necessary, a pro-bono legal defense in support of the resolution.

The California Healthy Youth Act (“CHYA”) requires all public schools to provide notification and opt-out before giving instruction in comprehensive sex education or HIV prevention. The proposed Resolution incorporates the state law into the board’s local policy, something that is entirely permissible.

Incorporating these requirements into local policy also provides parents greater awareness of their rights under state law, as many families may not know about their right to be notified and opt their child out of certain subjects. Giving parents more information on their rights under state law is a good thing for all families. The Resolution does not contain any inaccuracies with respect to the law. Below are my responses to five specific alleged inaccuracies and concerns that have been raised regarding the Resolution:

1. **CONCERN:** The most recent landmark opinion on parental rights in the U.S. Supreme Court, *Troxel v. Granville*, 530 U.S. 57, 65 (2000), and a similar California court of appeals case *In re Marriage of Harris*, 34 Cal. 4th 210, 223 (2004), involve parental rights verse grandparents visiting their grandchildren, and these cases are thus inapplicable to parental rights in education.

RESPONSE: As you may know, Supreme Court case precedent is used to guide and direct future issues under the same principals. This case, like all Supreme Court cases, is not limited in applicability to a specific factual scenario, i.e. parental rights in the context of grandparents’ visitation. In *Troxel*, the Supreme Court summarized all previous parental rights cases and held that “it cannot now be doubted that the Due Process Clause of the Fourteenth Amendment protects the fundamental right of parents to make decisions concerning the care, custody, and control of their

children. In *Troxel*, the Supreme Court summarized the history behind parental rights as follows: "The liberty interest at issue in this case -- the interest of parents in the care, custody, and control of their children -- is perhaps the oldest of the fundamental liberty interests recognized by this Court. More than 75 years ago, in *Meyer v. Nebraska* ... we held that the "liberty" protected by the Due Process Clause includes the right of parents to "establish a home and bring up children" and "to control the education of their own." *Id.* at 65.

The Supreme Court made it clear that the right of parents to "establish a home and bring up children and to control the education of their own" is a fundamental Constitutional right. In the context of sexual health education, the same principal applies. In fact, schools teaching children about gender issues is an even more serious infringement on parental rights than visitation of grandparents. Thus *Troxel* applies ever more to protect children and parental rights here, where it relates to parental rights in teaching their children about sensitive issues of sexuality, marriage, and religion.

2. **CONCERN:** The case of *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 506 (1969) is misapplied to the Resolution because the CHYA does not compel students to engage in expressions they disagree with, in violation of their First Amendment rights.

RESPONSE: The resolution does not claim that the CHYA compels students to engage in expression they disagree with. The Resolution merely references students' rights and reaffirms those rights. There is nothing wrongful or inaccurate about reiterating the important constitutional protections of students.

3. **CONCERN:** The Resolution misinterprets Education Code Section 51932(b) which makes it clear that the opt-out provision of the CHYA does not apply to lessons on gender identity and sexual orientation, when not included as part of comprehensive sex education.

RESPONSE: Discussions of gender identity and sexual orientation, when not included as part of comprehensive sex education, are not subject to the CHYA. There is nothing in California law that prevents schools from voluntarily providing notification and opt-out on these or other sensitive subjects. Section 51932(b) is not an exception to the parents' opt-out right. If curriculum is required by the CHYA, parents absolutely have a right to excuse their children from any and all parts of the curriculum under Section 51938(a).

For example, Section 51932, the same section of the California Education Code that exempts discussions of gender identity and sexual orientation from the mandatory notification and opt-out also exempts any "description or illustration of human reproductive organs that may appear in a textbook ... if the textbook does not include other elements of comprehensive sexual education." This section was intended to allow schools to use textbooks in a human anatomy class that include accurate illustrations of the male and female human body. The use of such a textbook would not trigger the mandatory notification and opt-out requirement. However, a school could nonetheless voluntarily provide a warning to parents if students were going to view a detailed

illustration of the human body in their anatomy class so that parents could decide whether their child is mature enough to handle exposure to the imagery. Thus, the Resolution does not misinterpret Section 51932(b).

4. **CONCERN:** The Resolution misstates California law by claiming that the law allows parents to excuse their children from issues that they find controversial.

RESPONSE: First, the Resolution does not claim that California law allows parents to opt out of non sex-education instruction. The Resolution clearly states that nothing in the law prohibits it. Second, it is false that a school district can only excuse a student if specifically authorized by the state to do so, and because there is no affirmative right to do so, districts may not allow parents to excuse their children.

California law only makes notification and opt-out mandatory in certain instances (i.e. comprehensive sex education). Article 4 of the CYHA makes the principal of parental rights in the context of sex education crystal clear. In all other instances, schools can voluntarily provide notification and opt-out. There is nothing in California law that prevents schools from voluntarily providing notification and opt-out on sensitive subjects such as gender identity and sexual orientation.

5. **CONCERN:** The Resolution misstates California law with respect to allowing parents to excuse their children from topics which parents disagree.

RESPONSE: While California law requires schools to allow notice and opt-out for sex-education, there is no state law that forbids opt-out and excusals for other lessons at the discretion of the local school body. Although parents have no legal right to opt their child out, there is nothing in California law that prevents schools from voluntarily providing notification and opt-out on sensitive subjects.

Thank you for your attention to this letter and for your consideration of Dr. Williams' Resolution. Please contact me should you have any questions or concerns.

Kind regards,



Nada N. Higuera