



SEX EDUCATION INSTRUCTION FAQ

This FAQ is intended to provide an overview of [HB19-1032](#) (eff. 5/31/19) and the resulting changes to comprehensive human sexuality education under Colorado law at C.R.S. § 22-1-128. Please note that this FAQ does not address health education pursuant to the *Colorado Comprehensive Health Education Act*, C.R.S. § 22-25-101 *et seq.* *This FAQ is for informational purposes only and does not constitute legal advice. Specific questions should be referred to the school district's legal counsel.*

Background

2013 – HB13-1081

In 2013, HB13-1081 revised state law regarding the provision of family life and sex education courses by school districts, BOCES, charter schools, and institute charter schools. In sum, the law repealed and replaced the previous statute that addressed the teaching of human sexuality (i.e., sex education) courses by any public school. The new law (C.R.S. § 22-1-128) delineated and was more definitive as to the content that must be included in a public school's comprehensive human sexuality education program, if offered. The law retained the process for parents/guardians to opt their child out of a human sexuality course.

The law created a comprehensive human sexuality grant program within the Colorado Department of Public Health and Environment (CDPHE). C.R.S. § 22-44-101 *et seq.* Any public school that receives grant money from the CDPHE to implement a comprehensive human sexuality education program must comply with the content standards set forth in C.R.S. § 22-1-128. The law also prohibits public schools from using any direct or indirect funding from the federal government for the provision of an "abstinence education program." C.R.S. § 22-1-128(9).

2019 – HB19-1032

After much debate during the 2019 legislative session, HB19-1032 was heavily amended and passed during the final few days of the legislation session. The legislation as initially proposed included reorganizing the statute, but that was dropped in the final versions. Under the final version passed by the legislature and signed by the Governor, in sum, school districts, BOCES, charter schools, and institute charter schools still are not required to provide human sexuality instruction. HB19-1032 modified the content requirements for comprehensive human sexuality education curriculum, if offered by a public school. In addition, money was appropriated to the CDPHE for the grant program. The changes as a result of HB19-1032 are discussed in more detail below.

Q: What is “human sexuality instruction” (i.e., “sex education”) under Colorado law?

A: “Human sexuality instruction” is defined in the law as “an oral, written, or digital lesson, lecture, or presentation given by school staff or nonschool staff that teaches about abstinence or sexual activity in the context of student health or healthy relationships. Instruction does not include student speech.” C.R.S. § 22-1-128(2)(d.7). The guidelines and content standards for such instruction, if offered by a public school, are set forth at C.R.S. § 22-1-128 and discussed further below.

Q: Is a comprehensive human sexuality education program or human sexuality instruction required in Colorado?

A: No. That did **not** change as a result of HB19-1032. Colorado does not require public schools to provide a comprehensive human sexuality education program or instruction on human sexuality. Public schools can choose whether or not to offer it. C.R.S. § 22-1-128. If a public school opts to offer a comprehensive human sexuality education program, it must follow the guidelines and content standards consistent with C.R.S. § 22-1-128.

Under the Colorado Constitution, local school boards have control over the instruction in their local school districts. Colo. Const. Art. IX, § 15. State law sets minimum requirements for education programs in certain areas, including for comprehensive human sexuality education programs, and the Colorado Department of Education develops state standards that provide guidelines for instruction. More information is available on the CDE website [here](#) and [here](#). For human sexuality instruction, local school boards retain local control to determine *if* they provide such instruction, and if so, how they teach it, so long as it meets the minimum legal requirements.

Q: Can parents/guardians opt their child out of human sexuality instruction?

A: Yes. This also did **not** change as a result of HB19-1032. If a public school chooses to provide a comprehensive human sexuality education program, parents/guardians still have the right to opt their child out of such instruction. Before offering any human sexuality instruction, the school must provide parents/guardians with the following:

- Written notification of the ability to excuse a child, without penalty or additional assignment, from that portion of the curriculum that includes comprehensive human sexuality education; and
- A detailed, substantive outline of the topics and materials to be presented in that portion of the planned curriculum related to comprehensive human sexuality education.

Parents/guardians must submit the request to excuse their child in writing. Schools are prohibited from requiring parents/guardians to state a reason for requesting the exemption from the planned curriculum related to comprehensive human sexuality education. C.R.S. § 22-1-128(3), (4).

Q: What changes were made to the content requirements for human sexuality education?

A: As discussed above, HB19-1032 did not change either a public school's ability to choose whether to offer a comprehensive human sexuality education program or a parent's/guardian's right to opt their child out of such instruction if offered by the public school.

HB19-1032 did change C.R.S. § 22-1-128(6) to state: "Human sexuality instruction is not required. However, if a school district, [BOCES], charter school, or institute charter school offers human sexuality instruction, the instruction must be comprehensive and meet the comprehensive human sexuality education content requirements."

Here is a summary of the changes to the content requirements if a public school chooses to offer a comprehensive human sexuality education program:

- Instruction on consent and safe and healthy relationships. The law already included the requirement for instruction on developing safe and healthy relationships. That was expanded to now require instruction to:

"Promote the development of healthy relationships by providing human sexuality instruction on: (I) how to communicate consent, recognize communication of consent, recognize withdrawal of consent, and understand [the] age of consent [under Colorado law]; (II) how to avoid making unwanted verbal, physical, and sexual advances; (III) how to avoid making assumptions about a person's supposed sexual intentions based on that person's appearance or sexual history; and (IV) how to avoid persuading a person to participate in a sexual encounter when that person has not provided consent or has withdrawn consent." C.R.S. § 22-1-128(6)(c)(I)-(IV).

"Consent" is defined as "the affirmative, unambiguous, voluntary, continuous, knowing agreement between all participants in each physical act within the course of a sexual encounter or interpersonal relationship." C.R.S. § 22-1-128(2)(b.5).

"Healthy relationship" is defined as "an interpersonal relationship that is free of physical, sexual, and emotional abuse, coercion, and violence." C.R.S. § 22-1-128(2)(d.5).

- Prohibits instruction from emphasizing sexual abstinence as the primary or sole acceptable preventive method available to students. C.R.S. § 22-1-128(6)(i).
- Continues to allow and encourages discussion of health, moral, ethical, or religious values as they pertain to comprehensive human sexuality, healthy relationships, or family foundation. However, "human sexuality instruction must not explicitly or implicitly: (I) use shame-based or stigmatizing language or instructional tools; (II) employ gender stereotypes; or (III) exclude the health needs of lesbian, gay, bisexual, or transgender individuals." C.R.S. § 22-1-128(7)(a), (b)(I)-(III).

- Does not require public schools to include instruction on pregnancy outcome options. However, if a public school “opts to provide instruction on pregnancy outcome options, it must cover all pregnancy outcome options available, and instruction must be provided in an objective, unbiased manner and it must not endorse or favor one or more pregnancy outcome options.” C.R.S. § 22-1-128(6.5).
- Continues to require medically accurate information about methods to prevent unintended pregnancy and sexually transmitted diseases. The methods taught must include “information about the correct and consistent use of abstinence, contraception, including all FDA approved forms of contraception, condoms, and other barrier methods and must be taught in a cohesive, integrated, objective manner so that youth learn the full scope of preventive methods available to them and are empowered to decide for themselves which preventive methods are best suited for their individual needs, beliefs, and values.” C.R.S. § 22-1-128(6)(b).
- Requires public schools to provide “age-appropriate information concerning...’safe haven laws’ ...relating to the safe abandonment of a child to a firefighter at a fire station or to a staff member at a hospital or a community clinic emergency center within the first seventy-two hours of the child's life.” C.R.S. § 22-1-128(6)(j). This also is required by [SB19-025](#) (eff. 8/2/19), which amended C.R.S. § 22-25-103(n).
- Added definitions at C.R.S. § 22-1-128(2).

Q: Do students in all grades have to receive human sexuality instruction?

A: No. HB19-1032 did not change a public school’s ability to choose whether to offer a comprehensive human sexuality education program or a parent’s/guardian's right to opt their child out of such instruction if offered by the public school, as discussed above.

In addition, the law continues to **exempt students in kindergarten through third grade** from human sexuality instruction. C.R.S. § 22-1-128(11).

Also, the law continues to require that any human sexuality instruction, if offered, be age appropriate. C.R.S. § 22-1-128(6)(f).

Q: Did anything change regarding teaching about LGBTQ individuals?

A: No. The law, as a result of HB13-1081, already included a requirement that if a public school provides a comprehensive human sexuality education program, it must take into account all communities, including the LGBTQ community.

The preexisting statutory language stated that the instruction must be “culturally sensitive,” including “resources, references, and information that are meaningful to the experiences and needs of communities of color; immigrant communities; lesbian, gay, bisexual, and transgender communities; people with physical or intellectual disabilities; people who have experienced sexual victimization; and others whose experiences have traditionally been left out of sexual

health education, programs, and policies.” This was retained in HB19-1032; the only addition was to add “people who are intersex.” C.R.S. § 22-1-128(2)(c), (6)(f).

Q: What did not change in the content requirements for human sexuality education?

A: Here is a summary of what did not change in the content requirements if a public school chooses to offer a comprehensive human sexuality education program, in addition to the parts noted above that were amended by HB19-1032:

- Encourage parental involvement and family communication. C.R.S. § 22-1-128(6)(a).
- Include discussions and information on how to recognize and respond safely and effectively in situations where sexual or physical violence may be occurring or where there may be a risk for these behaviors to occur. C.R.S. § 22-1-128(6)(d).
- Include discussion of how alcohol and drug use impairs responsible and healthy decision-making. C.R.S. § 22-1-128(6)(e).
- Be comprehensive, age-appropriate, culturally sensitive, inclusive of a positive youth development framework, and medically accurate. C.R.S. § 22-1-128(6)(f).
- Provide instruction about the health benefits and potential side effects of using contraceptives and barrier methods to prevent pregnancy, including instruction regarding emergency contraception and the availability of contraceptive methods. C.R.S. § 22-1-128(6)(g).
- For school districts that have established a character education program pursuant to C.R.S. § 22-29-103, promote the guidelines of behavior established in the character education program. C.R.S. § 22-1-128(6)(h).

Q: Can a public school request a waiver from the requirements of C.R.S. § 22-1-128 for a comprehensive human sexuality education program?

A: School districts and BOCES, if they choose to provide a comprehensive human sexuality education program, **cannot** seek a waiver from the content requirements for human sexuality instruction. C.R.S. § 22-2-117(1)(b)(IX).

Charter schools, however, **can** seek a waiver of the content requirements for human sexuality instruction if they choose to provide a comprehensive human sexuality education program. *See* C.R.S. §§ 22-30.5-104, 22-30.5-105. The versions of HB19-1032 as initially introduced would have prohibited charter schools from requesting waivers from the content requirements for human sexuality instruction. But the final version of the law keeps that as an option for a charter school. When a charter school wants to apply for a “non-automatic” waiver from this or any other state law, it must submit a rationale and replacement plan for each waiver requested, specifying the manner in which the charter school will comply with the intent of the waived

statute(s). The decision to grant or deny the waiver is up to the State Board of Education. More information on charter school waivers is available [here](#).

Q: Are there any changes to the Comprehensive Human Sexuality Education Grant Program?

A: The Comprehensive Human Sexuality Education Grant Program was created within the Colorado Department of Public Health and Environment (CDPHE) in 2013 pursuant to HB13-1081, as discussed above. As a result of HB19-1032, \$1,000,000 from the general fund was appropriated for the grant program for the 2019-20 fiscal year.

Any public school that receives grant money from the CDPHE to implement a comprehensive human sexuality education program must comply with the criteria and standards of C.R.S. § 22-1-128.

HB19-1032 amends certain provisions of the grant program, including that applicants must demonstrate a need for grant money to implement a comprehensive human sexuality education program, and rural or public schools that do not currently offer a program are to receive priority when grant recipients are selected. Membership on the oversight entity for the grant was increased by nine representatives and must represent diverse community perspectives and make an effort to include committee members who are diverse.

Information about the grant program is available on the CDPHE website [here](#).

Q: Are there any changes to CASB sample school board policies as a result of HB19-1032?

A: As a result of the many changes in 2013 due to HB13-1081, at that time we consolidated the CASB sample school board policies regarding health education, family life/sex education, and HIV/AIDS education into one, comprehensive CASB sample school board policy, IHAM, and accompanying CASB sample regulation, IHAM-R.

The focus of CASB sample school board policy IHAM and accompanying CASB sample regulation IHAM-R are on the opt out procedures required by law depending on the type of instruction provided by a school district. Discussion of curriculum content is limited to stating that it must be in accordance with applicable law and the district's academic standards, as a school district's curriculum is established by the local school board. Accordingly, we determined that the sample policy and regulation do not need to be amended based on HB19-1032 and SB19-025. Local school boards should review their policies and regulations in order to ensure they reflect the law and local circumstances and needs.

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