Understanding Texas Law on Sexual Health Education

Originally passed in 1995, the Texas Education Code (TEC) is the state law that governs Texas public education. TEC Section § 28.004(e)-(j) outlines the requirements for sexual health education instruction (called Human Sexuality Instruction specifically in the code), indicates the need for every school district to have a School Health Advisory Council (SHAC) that reviews sexual education instruction, and describes the process for parent notification. It is important to remember that some school districts set their own policy which may be slightly different or more restrictive than the state’s minimum requirements for sexual health education instruction. Therefore it is important to review your own district’s policy as well.

In Reference To*:
*The TEC should be reviewed after legislative sessions to determine if changes have been made to the code

iCHAMPSS Tools to Reference:
a. Prioritize Facts and Tips: Improving SHAC Performance
c. Prepare Template: Notification Letter to Parents
Texas Education Code Section § 28.004

Law regarding School Health Advisory Council (SHAC)
Sec. 28.004. LOCAL SCHOOL HEALTH ADVISORY COUNCIL AND HEALTH EDUCATION INSTRUCTION. (a) The board of trustees of each school district shall establish a local school health advisory council to assist the district in ensuring that local community values are reflected in the district's health education instruction.

(b) A school district must consider the recommendations of the local school health advisory council before changing the district’s health education curriculum or instruction.

(c) The local school health advisory council’s duties include recommending:
   (1) the number of hours of instruction to be provided in health education;
   (2) curriculum appropriate for specific grade levels designed to prevent obesity, cardiovascular disease, and Type 2 diabetes through coordination of:
      (A) health education;
      (B) physical education and physical activity;
      (C) nutrition services;
      (D) parental involvement; and
      (E) instruction to prevent the use of tobacco;
   (3) appropriate grade levels and methods of instruction for human sexuality instruction; and
   (4) strategies for integrating the curriculum components specified by Subdivision (2) with the following elements in a coordinated school health program for the district:
      (A) school health services;
      (B) counseling and guidance services;
      (C) a safe and healthy school environment; and
      (D) school employee wellness.

(d) The board of trustees shall appoint at least five members to the local school health advisory council. A majority of the members must be persons who are parents of students enrolled in the district and who are not employed by the district. One of those members shall serve as chair or co-chair of the council. The board of trustees also may appoint one or more persons from each of the following groups or a representative from a group other than a group specified under this subsection:
   (1) public school teachers;
   (2) public school administrators;
   (3) district students;
   (4) health care professionals;
   (5) the business community;
   (6) law enforcement;
   (7) senior citizens;
   (8) the clergy;
   (9) nonprofit health organizations; and
   (10) local domestic violence programs.

(d-1) The local school health advisory council shall meet at least four times each year.

Law regarding Sexual Health Education Instruction
(e) Any course materials and instruction relating to human sexuality, sexually transmitted diseases, or human immunodeficiency virus or acquired immune deficiency syndrome shall be selected by the board of trustees with the advice of the local school health advisory council and must:
   (1) present abstinence from sexual activity as the preferred choice of behavior in relationship to all sexual activity for unmarried persons of school age;
   (2) devote more attention to abstinence from sexual activity than to any other behavior;
Texas Education Code Section § 28.004 (cont’d)

(3) emphasize that abstinence from sexual activity, if used consistently and correctly, is the only method that is 100 percent effective in preventing pregnancy, sexually transmitted diseases, infection with human immunodeficiency virus or acquired immune deficiency syndrome, and the emotional trauma associated with adolescent sexual activity

(4) direct adolescents to a standard of behavior in which abstinence from sexual activity before marriage is the most effective way to prevent pregnancy, sexually transmitted diseases, and infection with human immunodeficiency virus or acquired immune deficiency syndrome; and

(5) teach contraception and condom use in terms of human use reality rates instead of theoretical laboratory rates, if instruction on contraception and condoms is included in curriculum content.

(f) A school district may not distribute condoms in connection with instruction relating to human sexuality.

(g) A school district that provides human sexuality instruction may separate students according to sex for instructional purposes.

(h) The board of trustees shall determine the specific content of the district’s instruction in human sexuality, in accordance with Subsections (e), (f), (g).

(i) Before each school year, a school district shall provide written notice to a parent of each student enrolled in the district of the board of trustees’ decision regarding whether the district will provide human sexuality instruction to district students. If instruction will be provided, the notice must include:

(1) a summary of the basic content of the district’s human sexuality instruction to be provided to the student, including a statement informing the parent of the instructional requirements under state law;

(2) a statement of the parent’s right to:

(A) review curriculum materials as provided by Subsection (j); and

(B) remove the student from any part of the district’s human sexuality instruction without subjecting the student to any disciplinary action, academic penalty, or other sanction imposed by the district or the student’s school; and

(3) information describing the opportunities for parental involvement in the development of the curriculum to be used in human sexuality instruction, including information regarding the local school health advisory council established under Subsection (a). (i-1) A parent may use the grievance procedure adopted under Section 26.011 concerning a complaint of a violation of Subsection (i).

(j) A school district shall make all curriculum materials used in the district’s human sexuality instruction available for reasonable public inspection.
### Understanding Code Section § 28.004 (e)-(j)

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<thead>
<tr>
<th>Human Sexuality Curriculum Instruction</th>
<th>How this Affects Your Curriculum Instruction:</th>
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<tr>
<td><strong>Must Discuss Abstinence As the Best Choice of Behavior</strong></td>
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<tr>
<td>“…present abstinence from sexual activity as the preferred choice of behavior in relationship to all sexual activity for unmarried persons of school age…”</td>
<td>Your program must state that abstinence is the best choice in an unmarried relationship but you can still discuss condoms and contraception.</td>
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<tr>
<td>“…devote more attention to abstinence from sexual activity than to any other behavior…”</td>
<td>Your program must discuss abstinence more than other pregnancy, HIV/STD prevention methods (e.g., condoms and other contraceptives).</td>
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<tr>
<td>“…emphasize that abstinence from sexual activity, if used consistently and correctly, is the only method that is 100 percent effective in preventing pregnancy, sexually transmitted diseases, infection with human immunodeficiency virus (HIV)…”</td>
<td>Your program must state that abstinence is the only 100% effective method of preventing pregnancy and HIV/STDs but you can still discuss condoms and contraception.</td>
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**May Discuss Condoms and Contraception, But Only In Terms of Human-Use Reality Rates**

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<td>“…teach contraception and condom use in terms of human use reality rates instead of theoretical laboratory rates, if instruction on contraception and condoms is included in curriculum content…”</td>
<td>If your program includes information on condoms /contraception it must discuss their effectiveness in terms of human-use reality rates rather than theoretical laboratory rates. Human-use reality rates refer to “typical use.” This is normal human condom/contraceptive use including incorrect or inconsistent use (e.g., condom breaking, not using a condom/contraceptive each time a person has sex). Human-use reality rates are typically lower than theoretical laboratory rates. Theoretical laboratory rates refer to “perfect use” or when a person uses their condom/contraceptive method consistently and correctly. These rates are calculated in laboratory studies, where perfect use can be verified.*</td>
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<td>“…a school district may not distribute condoms in connection with instruction relating to human sexuality…”</td>
<td>Your program may not give condoms to students but you may conduct condom use demonstrations.</td>
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**May Separate Students by Gender During Instruction**

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<td>“…a school district that provides human sexuality instruction may separate students according to sex for instructional purposes…”</td>
<td>You may separate boys and girls during instruction, but keep in mind your chosen program’s implementation design. If your program is designed for gender-integrated classes then separating students may affect how well the program works. Contact the program developers if you have questions.</td>
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Understanding Code Section § 28.004 (e)-(j) (cont’d)

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<tr>
<th>Texas Education Code on Parent Notification For Human Sexuality Instruction</th>
<th>How this Affects Your Curriculum:</th>
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<td>&quot;...before each school year, a school district shall provide written notice to a parent of each student enrolled in the district of the board of trustees' decision regarding whether the district will provide human sexuality instruction to district students...”</td>
<td>Your school must send a letter to parents informing them that human sexuality instruction will be provided to their child in the coming school year.</td>
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<td>&quot;...a summary of the basic content of the district’s human sexuality instruction to be provided to the student, including a statement informing the parent of the instructional requirements under state law...”</td>
<td>Your school must send a summary of the content of the school district’s human sexuality program to the parents as well as the state requirements required for human sexuality instruction before each school year.</td>
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<td>&quot;...a statement of the parent’s right to: (A) review curriculum materials (B) remove the student from any part of the district’s human sexuality instruction without subjecting the student to any disciplinary action, academic penalty, or other sanction imposed by the district or the student’s school...”</td>
<td>Your school must inform parents of their right to look over the program materials and to remove their child from the program without academic punishment or penalty.</td>
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<td>&quot;...information describing the opportunities for parental involvement in the development of the curriculum to be used in human sexuality instruction, including information regarding the local school health advisory council (SHAC)...”</td>
<td>Your school must inform parents of how they may participate in the decision making process by joining the district SHAC.</td>
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<td>&quot;...A parent may use the grievance procedure adopted under Texas Education Code Section §26.011 concerning a complaint...”</td>
<td>Your school must inform parents how they may file a formal complaint related to sexual health education as detailed by TEC Section § 26.011.</td>
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<td>&quot;...A school district shall make all curriculum materials used in the district’s human sexuality instruction available for reasonable public inspection. ...”</td>
<td>Your school must provide the program materials to be available for public viewing. You can accomplish this by hosting a parent information night where parents may review the content and ask questions about the program, by providing online access to the program (if the program is web-based), or by keeping a copy of the program for long-term review at the school, or with the district’s health education administrator or SHAC coordinator.</td>
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