

# A Summary of Legal Obligations and Best Practices

## HIV/STI and Sex Education in Michigan Public Schools

This document is a summary of legal statutes, departmental interpretations, and best practices pertaining to HIV/STI and sex education in Michigan public schools. This summary should not be used to replace statute. For the exact language of the MCL, go to [www.michiganlegislature.org](http://www.michiganlegislature.org). Concerns regarding interpretation should be directed to legal counsel.

Key Components, the Law, and Best Practice	
<b>Mandated HIV and Allowed Sex Education</b>	<p>School districts are <b>required</b> to teach about dangerous communicable diseases, including, but not limited to, HIV/AIDS. (§380.1169) Instruction regarding dangerous communicable diseases, including, but not limited to, HIV/AIDS, must be offered at least <b>once</b> a year <b>at every building level</b> (elementary, middle/junior, senior high).</p> <p>School districts can <b>choose</b> to teach sex education. If they do, they must do so in accordance with those sections of the Michigan Compiled Laws (MCL) related to sex education and reproductive health. (§380.1506, §380.1507, §380.1507a, §380.1507b, §388.1766, §388.1766a)</p>
<b>Parental Rights and Exclusion from Instruction</b>	<p>For HIV/AIDS and sex education instruction, parents and/or legal guardians must be notified in advance of:</p> <ul style="list-style-type: none"> <li>• The <b>content</b> of the instruction.</li> <li>• Their <b>right</b> to review materials in advance.</li> <li>• Their <b>right</b> to observe instruction.</li> <li>• Their <b>right</b> to excuse their child without penalty. (§380.1507, §388.1766)</li> </ul> <p>For sex education only, if a parent or legal guardian files a <b>continuing written notice</b> (i.e., a request to have their child permanently excluded from sex education classes), the student shall not be enrolled in the class(es) unless the parent or legal guardian submits a written authorization for that enrollment. (§380.1507a)</p>
<b>Sex Education Advisory Board Membership</b>	<p>Every district that chooses to implement sex education must have a <b>sex education advisory board (SEAB)</b>.</p> <ul style="list-style-type: none"> <li>• The local school board determines the terms of service, the number of members, and a membership selection process that reasonably reflects the school district population.</li> <li>• The SEAB must include parents of children attending the district's schools, pupils in the district's schools, educators, local clergy, and community health professionals.</li> <li>• At least <b>half of the members must be parents</b> who have a child attending a school operated by the school district. A <b>majority</b> of those parent members <b>must not be employed by a school district</b>.</li> <li>• Members must be given two weeks written or electronic notice of meetings. (§380.1507)</li> </ul>
<b>SEAB Chairs</b>	<p><b>Two co-chairs</b> must be appointed by the school board to chair the SEAB, at least <b>one of whom is a parent</b> of a child attending a school operated by the school district. (§380.1507)</p>
<b>SEAB Role</b>	<p>The SEAB is responsible for:</p> <ul style="list-style-type: none"> <li>• <b>Establishing program goals and objectives</b> for pupil knowledge and skills that are likely to reduce the rates of sex, pregnancy, and STDs.</li> <li>• <b>Reviewing and recommending materials and methods</b> to the local school board, taking into consideration the district's needs, demographics, and trends including, but not limited to, teenage pregnancy rates, STD rates, and incidents of sexual violence and harassment.</li> <li>• <b>Evaluating, measuring, and reporting the attainment of program goals and objectives</b> and making the resulting report available to parents in the district at least once every two years. (§380.1507)</li> </ul>
<b>Sex Education Supervisor</b>	<p>Every district choosing to have a sex education program must have a <b>sex education supervisor</b>, approved by the Michigan Department of Education (MDE), who oversees the program of instruction. (§380.1506, §380.1507)</p>

<p><b>Required Content, Including Emphasis on Abstinence</b></p>	<p>Instruction in HIV/AIDS and sex education must <b>stress that abstinence</b> from sex is a responsible and effective method of preventing unplanned or out-of-wedlock pregnancy, and that it is the only protection that is 100% effective against unplanned pregnancy, sexually transmitted disease, and sexually transmitted HIV infection and AIDS. (§380.1169, §380.1507, §380.1507b)</p> <p>Instruction in HIV/AIDS must include the principal modes by which dangerous communicable diseases are spread and the <b>best methods for the restriction and prevention</b> of these diseases. (§380.1169)</p> <p>Sex education material discussing sex must be <b>age-appropriate</b>, must <b>not be medically inaccurate</b>, and must do all of the following:</p> <ol style="list-style-type: none"> <li>Discuss the <b>benefits of abstaining</b> from sex until marriage and the benefits of ceasing sex if a pupil is sexually active.</li> <li>Include a discussion of the possible emotional, economic, and legal <b>consequences</b> of sex.</li> <li>Stress that unplanned pregnancy and sexually transmitted diseases are <b>serious possibilities of sexual intercourse</b> that are not fully preventable except by abstinence.</li> <li>Advise pupils of the <b>laws pertaining to their responsibility as parents</b> to children born in and out of wedlock.</li> <li>Ensure that pupils are not taught in a way that <b>condones the violation of laws</b> of this state pertaining to sexuality, including, but not limited to, those relating to sodomy, indecent exposure, gross indecency, and criminal sexual conduct in the first, second, third, and fourth degrees.</li> <li><b>Teach pupils how to say "no"</b> to sexual advances and that is wrong to take advantage of, harass, or exploit another person sexually.</li> <li>Teach <b>refusal skills</b> and encourage pupils to resist pressure to engage in risky behavior.</li> <li>Teach that the pupil has the <b>power to control personal behavior</b>, and teach pupils to base their actions on reasoning, self-discipline, a sense of responsibility, self-control, and ethical considerations, such as respect for self and others.</li> <li>Provide instruction on <b>healthy dating relationships</b> and on how to set limits and recognize a dangerous environment.</li> <li>Provide information for pupils about how young parents can learn more about <b>adoption services</b> and about the provisions of the Safe Delivery of Newborns Law.</li> <li>Include information clearly informing pupils that <b>having sex or sexual contact with an individual under the age of 16 is a crime</b> punishable by imprisonment and that one of the other results of being convicted of this crime may be to be listed on the sex offender registry for 15 years, 25 years, or life.<sup>1</sup> (§380.1507b)</li> </ol>
<p><b>Allowed Content Regarding Risk Reduction</b></p>	<p>School districts must teach about the <b>best methods</b> for the restriction and prevention of dangerous communicable diseases, including, but not limited to HIV/AIDS. (§380.1169)</p> <p><b>Districts are not prohibited</b> from teaching about behavioral risk reduction strategies, including the use of condoms, within their sex education program. (§380.1507)</p>
<p><b>Prohibited Content or Actions</b></p>	<p><b>Clinical abortion cannot be considered a method of family planning, nor can abortion be taught as a method of reproductive health.</b> (§380.1507) "Family planning" means to regulate the number and spacing of children in a family through the practice of contraception or other methods of birth control. "Reproductive health" means that state of an individual's well-being which involves the reproductive system and its physiological, psychological, and endocrinological functions. (§380.1506)</p> <p>A person <b>cannot dispense or otherwise distribute a family planning drug or device</b> in a public school or on public school property. (§380.1507)</p>

<sup>1</sup> The wording of "k" has been revised to be consistent with changes to the Sex Offender Registry Act passed with Public Acts 17-19 of 2011. See [http://www.michigan.gov/documents/mde/memo\\_2011\\_SORA\\_and\\_Sex\\_Ed\\_366707\\_7.pdf](http://www.michigan.gov/documents/mde/memo_2011_SORA_and_Sex_Ed_366707_7.pdf)

	A school official, member of a governing board, or employee of the district or intermediate district, who is not the parent or legal guardian of that pupil, is prohibited from <b>referring a student for an abortion or assisting a student in obtaining an abortion</b> (§388.1766)
<b>Sex Education Program Parameters</b>	The definition determines which content and materials are considered “sex education” and need to go through the approval and parent notification process detailed in §380.1507 and §388.1766a. Many districts have found it useful to <b>develop or adopt a definition of sex education</b> that aligns with existing definitional language in the law.
<b>Approval Process</b>	<p>Curricula, materials, and methods used as a part of HIV/STI or sex education instruction <b>offered by a school district</b> must go through the formal approval process, including two public hearings and school board approval (§380.1169, §380.1507), in advance of instruction regardless of the:</p> <ul style="list-style-type: none"> <li>• class in which it is taught (e.g., health class, school-wide assembly, English class);</li> <li>• person providing the instruction (teacher, school nurse, guest speaker); or</li> <li>• place the instruction takes place (within the building versus off the school premises).</li> </ul>
<b>Teacher Qualifications</b>	<p>Each person who teaches K-12 pupils about HIV/AIDS <b>shall have training in HIV and AIDS</b> education for young people. (§380.1169) Any certified teacher who has completed this training may teach HIV/AIDS prevention.</p> <p>In order to teach sex education, teachers must be qualified to teach health.<sup>2</sup> (§380.1507) At the secondary level, this means teachers must have either the MA (health), MX (health, physical education, recreation and dance), or KH (family and consumer science) endorsement. If course content and lessons are being taught outside of the classroom setting, but within the instructional day, state law regarding teacher qualification applies. Because the classroom teacher is ultimately responsible for all instruction, they must be in the classroom if guest speakers are presenting.</p> <p>Trainings in both HIV/AIDS and sex education/reproductive health are usually offered through the regional school health coordinator that serves that school district. The MDE therefore recommends that teachers of sexuality education receive a minimum of six clock-hours of professional development in sexuality education content, teaching methods, and Michigan laws at least once every five years. The Office of Professional Preparation Services at MDE accepts applications from districts for full-year permits that allow certified teachers to teach without the required endorsements, while pursuing coursework toward earning the endorsement.</p>
<b>Disciplinary Policy</b>	The governing board of a district or intermediate district shall adopt and implement a disciplinary policy for a school official, member of a governing board, or employee of the district or intermediate district, who is not the parent or legal guardian of that pupil, who refers a pupil for an abortion or assists a pupil in obtaining an abortion.
<b>Complaint Process</b>	<p>If a parent or legal guardian of a pupil enrolled in a district or intermediate district (ISD) believes that the district or intermediate district has violated §388.1766, §388.1766a or sections of Michigan law pertaining to HIV/AIDS instruction or sex education (§380.1169, §380.1506, §380.1507), they can <b>file a complaint with the superintendent or chief administrator of the district</b> or ISD in which the pupil is enrolled. The district has 30 days to investigate, provide a written report, and if violations are found, develop a plan for corrective action. The district has an additional 30 days to take corrective action.</p> <p>If the parent is not satisfied with the investigation or findings made by the superintendent, the parent can <b>appeal the findings to the ISD</b> in which the district is located. The ISD has 30 days to investigate, provide a written report, and if violations are found, develop a plan for corrective action. The district has an additional 30 days to take corrective action.</p>

<sup>2</sup> See the section on teacher qualifications at [www.michigan.gov/hived](http://www.michigan.gov/hived)

	If the parent is not satisfied with the investigation or findings made by the ISD superintendent, the parent can <b>appeal the findings to the MDE</b> . The MDE has 90 days to investigate, provide a written report, and if violations are found, develop a plan for corrective action. The district has an additional 30 days to take corrective action. (§380.1766)
<b>Penalties</b>	If an investigation conducted by MDE (see Complaint Process section) reveals that a district or ISD has committed <b>one or more violations</b> of the following sections of the Revised School Code or State School Aid Act (§380.1169, §380.1506, §380.1507, §388.1766, §388.1766a) the district or intermediate district shall <b>forfeit</b> an amount equal to <b>1%</b> of its total state school aid allocation. (§388.1766a)
<b>State Board Policy</b>	The Michigan State Board of Education adopted a <b>Policy to Promote Health and Prevent Disease and Pregnancy</b> in September of 2003. The policy recommends that local school boards select, adopt, and implement comprehensive sexuality education programs that are based on sound science and proven principles of instruction. For a copy, go to <a href="http://www.michigan.gov/hived">www.michigan.gov/hived</a> , under Law and Policy; click "State Board of Education Policy to Promote Health and Prevent Disease and Pregnancy."
<b>Health Education Standards and Model Curricula</b>	<p>In 2007, the Michigan State Board of Education adopted the Grade Level Content Expectations (GLCEs) for Grades K-8 and Michigan Merit Curriculum Credit Guidelines (MMC) for Grades 9-12 for Health Education. The GLCEs and MMC for Health Education provide recommendations for content and skills to include in HIV prevention (Strand 6), and growth and development and sex education (Strand 7) at specific grade levels.</p> <p>Michigan's model health education curriculum, the <i>Michigan Model for Health®</i>, is aligned with the GLCEs and MMC and is used by a majority of school districts in Michigan. It includes model curricula on HIV/STI prevention for Grades 4 and 5, 7-8, and 9-12. Districts can choose to adopt, adapt, or disregard the model curriculum and implement commercially or locally developed curricula.</p>

<b>Key to Michigan Compiled Laws Regarding HIV/STI and Sex Education</b>			
<b>MCL No.</b>	<b>Public Act</b>	<b>Last Action</b>	<b>Focus</b>
<a href="#">380.1169</a>	School Code	Amended 6/2004	Dangerous communicable diseases; human immunodeficiency virus infection and acquired immunodeficiency virus infection; teacher training; teaching materials; curricula; teaching of abstinence from sex.
<a href="#">380.1506</a>	School Code	Amended 11/1977	Program of instruction in reproductive health; supervision; request to excuse pupil from attendance; "reproductive health" defined.
<a href="#">380.1507</a>	School Code	Amended 6/2004	Instruction in sex education; instructors, facilities, and equipment; stressing abstinence from sex; elective class; notice to parent or guardian; request to excuse pupil from attendance; qualifications of teacher; sex education advisory board; public hearing; distribution of family planning drug or device prohibited; "family planning," "class," and "course" defined.
<a href="#">380.1507a</a>	School Code	Added 7/1996	Notice of excuse from class; enrollment.
<a href="#">380.1507b</a>	School Code	Amended 6/2004	Sex education and instruction; curriculum requirements.
<a href="#">388.1766</a>	State Aid Act	Amended 10/2019	Disciplinary policy for referral of pupil for abortion or assisting pupil in obtaining abortion.
<a href="#">388.1766a</a>	State Aid Act	Amended 10/2019	Instruction in reproductive health or other sex education; requirements; complaint process.

For more information on HIV/STI and sex education in Michigan public schools, go to the MDE web site, [www.michigan.gov/hived](http://www.michigan.gov/hived). Questions should be directed to Laurie Bechhofer, MDE HIV/STD Education Consultant, at 517-335-7252 or [BechhoferL@michigan.gov](mailto:BechhoferL@michigan.gov)