ALAN WILSON
ATTORNEY GENERAL

October 28, 2025

The Honorable Mark Smith, Member
The Honorable Jordan Pace, Member
The Honorable James Teeple, Member
327-A Blatt Bldg.
Columbia, SC 29201

Dear Representatives Smith, Pace and Teeple:

You have made inquiry regarding six curricula which some school districts are currently using regarding sex education. These are: Be Proud! Be Responsible!; Making a Difference; Making Proud Choices; Reducing The Risk; Rights Respect Responsibility (3 R's) and Safer Choices. You note that "[a]t least 18 districts are reporting on their websites that one or more of those curricula are currently in use."

Your concern is that one or more of these curricula or certain aspects thereof violate South Carolina or federal law. In this regard, you ask that we consider "the S.C. Comprehensive Health Education Act, laws regarding which age minors can legally consent to sex, laws regarding adults accepting or encouraging minors to break the law (age of consent), obscenity laws, or any other laws. . ."

Law/Analysis

We begin by noting that an Attorney General opinion only attempts to answer questions of law and how we believe a court may rule thereupon. See § 1-7-90 (Attorney General shall advise members of the General Assembly as to "questions of law."). We cannot determine issues of fact in an advisory opinion. Id. As we recognized in Op. S.C. Att'y Gen., 1985 WL 259225 (October 9, 1985),

> [a]s previous opinions of this Office and other Attorneys General conclude, the scope of an Attorney General's opinion is to address questions of law rather than the investigation of facts. Ops. Att'y Gen. (South Carolina April 5, 1984, and December 12, 1983). . . .
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> Because this Office does not have the authority of a court or other fact-finding body, we are not able, in a legal opinion, to adjudicate or investigate factual questions.

Accordingly, we are able to advise you as to the issues of law which a court would likely address with respect to the questions raised in your letter.

With that caveat in mind, we first turn to the Comprehensive Health Education Act. As recognized in Op. S.C. Att'y Gen., 1997 WL 569098 (August 21, 1997), the Act is:

> . . . codified at Section 59-32-5 et seq.[and] was enacted in 1988. The General Assembly's purpose in adopting the legislation was
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> > . . . to foster the department and dissemination of educational activities and materials which will assist South Carolina students, teachers, administrators and parents in the perception, appreciation and understanding of health principles and problems and responsible sexual behavior.

Moreover, in Op. S.C. Att'y Gen., 2000 WL 1347161 (August 18, 2000), we discussed the Act, in detail (CHEA) as follows:

> [t]he CHEA provides specific guidelines for implementing this general policy. Section 59-32-10(2), for example, defines "Reproductive health education" as instruction in human physiology, conception, prenatal care and development, childbirth, and postnatal care, but does not include instruction concerning sexual practices outside marriage or practices unrelated to reproduction except within the context of the risk of disease. Abstinence and the risks associated with sexual activity outside of marriage must be strongly emphasized (emphasis added).
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> Section 59-32-10(4) defines "Pregnancy prevention education" to be "instruction which is intended to:
> (a) stress the importance of abstaining from sexual activity until marriage;
> (b) help students develop skills to enable them to resist peer pressure and abstain from sexual activity;
> (c) explain methods of contraception and the risks and benefits of each method. Abortion must not be included as a method of birth control. Instruction explaining the methods of contraception must not be included in any education program for grades kindergarten through fifth. Contraceptive information must be even in the context of future family planning. (emphasis added).
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> In addition, Section 59-32-30 requires local school boards to implement the CHEA. Pursuant to Subsections (2), (3) and (5) of § 59-32-30, it is required that
> (2) Beginning with the 1988-89 school year, for grades six through eight, instruction in comprehensive health must include the following subjects: . . . . reproductive health education. Sexually transmitted diseases are to be included as a part of instruction. At the discretion of the local board, instruction in family life education or pregnancy prevention education or both may be included, but instruction in these

subjects may not include an explanation of the methods of contraception before the sixth grade.

(3) Beginning with the 1989-90 school year, at least one time during the four years of grades nine through twelve, each student shall receive instruction in comprehensive health education, including at least seven hundred fifty minutes of reproductive health education and pregnancy prevention education.

(5) The program of instruction provided for in this section may not include a discussion of alternate sexual lifestyles from heterosexual relationships including, but not limited to, homosexual relationships except in the context of instruction concerning sexually transmitted diseases. (emphasis added).

Other provisions of the Act are also worthy of note. For example, § 59-32-50 gives parents the right to receive notice of the materials being taught as part of the comprehensive education program and to exempt their children from the program if they so choose. Section 59-32-50 provides:

[p]ursuant to policies and guidelines adopted by the local school board, public school principals shall develop a method of notifying parents of students in the relevant grades of the content of the instructional materials concerning reproductive health, family life, pregnancy prevention, and of their option to exempt their child from this instruction, and sexually transmitted diseases if instruction in the diseases is presented as a separate component. Notice must be provided sufficiently in advance of a student's enrollment in courses using these instructional materials to allow parents and legal guardians the opportunity to preview the materials and exempt their children.

A public school principal, upon receipt of a statement signed by a student's parent or legal guardian stating that participation by the student in the health education program conflicts with the family's beliefs, shall except that student from any portion or all of the units on reproductive health, family life and pregnancy prevention where any conflicts occur. No student must be penalized as a result of an exemption. School districts shall use procedures to ensure that students exempted from the program by their parents or guardians are not embarrassed by the exemption. (emphasis added).

Section 59-32-60 requires the State Department of Education to "ensure compliance with this chapter." Section 59-32-80 provides that "[a]ny teacher violating the provisions of this chapter or who refuses to comply with the curriculum prescribed by the school board as provided by this chapter is subject to dismissal." Finally, § 59-32-90 expressly provides that "[f]ilms, pictures, or diagrams in any comprehensive health education program in public schools must be designed solely for the purpose of explaining bodily functions or the human reproduction process and may not include actual or simulated portrayals of sexual activities or sexual intercourse."

The August 8, 2000 opinion also referenced Op. S.C. Att'y Gen., 1997 WL 569041 (July 23, 1997). There, we addressed the question whether "a curriculum teaching putting off intercourse until an older age or until you're ready would comply with § 59-32-10(2)?" We stated:

> [t]he referenced statute states that >reproductive health education> "... does not include instruction concerning sexual practices outside marriage or practices unrelated to reproduction except within the context of the risk of disease." It also states that "(a]bstinence ... must be strongly emphasized." Under the above rules of construction, teaching about intercourse outside of marriage does not appear to be permitted by the General Assembly except in the context of disease. (emphasis added).
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> In other words, gratuitous, graphic descriptions of sex outside of marriage, which are unrelated to disease control, violate both the letter, as well as the spirit, of the CHEA.
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> In addition, the 1997 opinion dealt with the question of whether "contraceptive information [can] be given in hopes of preventing a future family for the students or does this paragraph [§ 59-32-10(4)(c)] apply to teaching about the use of contraceptives in future marriages as applied in § 59-32-10(2)." Our response to this question was as follows:
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> Section 59-32-10(2) requires contraceptive information to be "... given in the context of future family planning" and paragraph (4)(c), as quoted above, restricts instruction about sexual practices outside marriage or unrelated to reproduction. These restrictions in paragraph (10)(4)(c) indicate that the contraceptive information in (4)(c) must be given in the context of planning a future family during marriage.
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> Again, as we read the CHEA, gratuitous promotion of contraceptives is the antithesis of what the Legislature had in mind in the CHEA. While students must certainly be instructed with regard to contraceptives, educators must also take care that such instruction does not promote premarital sex, but rather discourages it.

The 2025-26 Appropriations Act makes clear that the Comprehensive Health Education Act is mandatory and binding upon every school district in South Carolina. Proviso 1.40(1) of the Act states:

> [e]ach school district is required to ensure that all comprehensive health education, reproductive health education, and family life education conducted within the district, whether by school district employees or a private entity, must utilize curriculum that complies with the provisions contained in Chapter 32, Title 59 and aligns to all standards and regulations adopted by the South Carolina State Board of Education. Each district shall publish on its website the title and publisher of all health education materials it has approved, adopted, and used in the classroom. If the department

> determines that a district is non-compliant with mandated health education upon review of the districts annual CHE Compliance Survey or if the district fails to publish the title and publisher of materials on its website, then the Department of Education shall withhold one percent of the districts funds allocated in Part 1A, Section 1, X – Student Health and Fitness Act until the department determines the district is in compliance.

In addition, the proviso allows "any person" to "complain in a signed, notarized writing to the chairman of the governing board of a school district that matter not in compliance with the requirements of Chapter 32, Title 59 is being taught in the district." If the complaint is deemed "founded," the board must ensure that "immediate action is taken to correct the violation." Failure to take such action will result in withholding at one percent of funding.

Legislation setting forth the limitations of sex education curricula are also generally enforceable in court. As one decision has explained,

> [b]ecause of its mandates and prohibitions [shalls and shall nots] the statute, in short, defines sex education and states what may and may not be included in the curriculum.
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> The statute does not delegate unlimited authority to school boards. The Board, of course, in implicitly authorized to assess the educational merit of sex education curricula and select one or more to be taught in its schools. Recognition of this authority does not shield, however, the selected curriculum from judicial scrutiny when the curriculum is alleged to violate in some particulars a specific part of the statute. The judiciary is constitutionally burdened with this responsibility in each case where an action alleges that conduct of a person, natural or juridical, violates a statute.

Coleman v. Caddo Par. Sch. Bd., 635 So.2d 1238, 1246 (La. Ct. App.) as amended on reh'g. (May 2, 1994), writ denied 94-1387 (La, 7/1/94), 639 So.2d 1171 and writ denied 94-1431 (La. 7/1/94), 639 So.2d 1171. Thus, any violation of the Health Education Act is enforceable in court.

We are also of the opinion that the recent Supreme Court decision in Mahmoud v. Taylor, 606 U.S. _____, 145 S.Ct. 2332 (2025), is particularly applicable here. In Mahmoud, parents of students and an unincorporated association of parents and teachers brought an action against a school board alleging the board's refusal to provide notice when "LGBTQ+ inclusive" storybooks would be taught and an opportunity to opt out of instruction infringed their First Amendment right to the free exercise of their religion. The United States Supreme Court held that the Board's introduction of the storybooks without notice and the opportunity to opt out violated the First Amendment.

In Mahmoud, the Supreme Court referenced its earlier decisions in West Virginia Bd. of Ed. v. Barnette, 319 U.S. 624 (1943) and Wisconsin v. Yoder, 406 U.S. 205 (1972) as controlling. According to the Supreme Court,

> [t]hese books carry with them "a very real threat of undermining" the religious beliefs that the parents wish to instill in their children. Yoder, 406 U.S. at 218, 92 S.Ct. 1526. Like the compulsory high school education considered in Yoder, these books impose upon children a set of values that are "hostile" to their parents' religious beliefs. Id., at 211, 92 S.Ct. 1526. And the books exert upon children a psychological "pressure to conform" to their specific viewpoints. Ibid. The books therefore present the same kind of "objective danger to the free exercise of religion that we identified in Yoder. Id., at 28, 92 S.Ct. 1526.
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> That "objective danger" is only exacerbated by the fact that the books will be presented to young children by authority figures in elementary school classrooms. As representatives of the Board have admitted, "there is an expectation that teachers use the LGBTQ-Inclusive Books as part of instruction," and "there will be discussion that ensues."

145 S.Ct. at 2355. In short, a school curriculum cannot, consistent with the First Amendment, carry "a very real threat" of undermining the religious beliefs which parents wish to instill in their children. Such a "threat" must provide parents with the opportunity to "opt out" their children from such a threat.

Conclusion

Of course, we cannot make factual determinations regarding the curriculum in question. While we appreciate your submitting the details of this curriculum, the Attorney General, in an opinion, does not possess the capability or the expertise to make a factual determination with respect to the legality thereof. Such a determination would, of necessity, be within the province of a court, or even the Department or State Board of Education. However, we have noted that a person with standing may challenge in court a curriculum which is violative of state law. Op. S.C. Att'y Gen., 1997 WL 569098 (August 21, 1997). Of course, only a court may ultimately deem a curriculum or parts thereof illegal.

Having expressed these caveats, we note that our August 8, 2000 opinion concluded that a court was likely to rule that the sex education curricula in question violated the Comprehensive Health Education Act. We today reaffirm the conclusions made in that opinion. School districts must strictly abide by the terms of the Health Education Act, particularly that part which stresses that abstinence must be emphasized in sex education classes. As our 2000 opinion earlier concluded, ". . . State law does not permit a curriculum to declare neutrality with respect to

whether students 'abstain or protect.' Instead, State law requires that abstaining from sex until marriage must . . . be 'strongly emphasized.'" That is the law.

Moreover, we also caution that the Supreme Court's holding in Mahmoud v. Taylor instructs that notice must be provided to parents and parents given the opportunity to "opt out" their children with respect to any curricula or instruction which infringes upon the Free Exercise of their religion under the First Amendment. Certainly, much in the curricula referenced in your letter could be challenged in court upon these First Amendment grounds. Of course, only a court may definitively so conclude. Nevertheless, it is our strong suggestion that school boards proceed with great caution in presenting health education curricula for the reasons referenced herein. The Comprehensive Health Education Act and the Free Exercise Clause of the First Amendment must be strictly followed.

To that end, Justice Thomas, in his concurring opinion in Mahmoud, noted that traditional sex education is hardly what is being taught as such in many schools today. He stated that "[t]he practice of teaching sexuality and gender identity to very young children at school appears to be significantly more recent than typical sex education. . . . Teaching young children about sexual and gender identity in ways that contradict parents religious teachings undermines those parents right to 'direct the religious upbringing of their children. . . .'" 145 S.Ct. at 2375, 2380. School boards must keep the First Amendment in mind when developing sex education curricula.

Sincerely,

Robert D. Cook
Solicitor General Emeritus