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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF FRESNO

American Academy of Pediatrics, California
District IX, Gay-Straight Alliance Network,
Aubree Smith, and Mica Ghimenti,

Plaintiffs and
Petitioners,

vs.

Clovis Unified School District,

Defendant and
Respondent.

FILED

AUG 21 2012

FRESNO COUNTY SUPERIOR COURT
By _____
LE - DEPUTY

12 DE CG 02608

Case No. _____

**VERIFIED COMPLAINT FOR
INJUNCTIVE AND DECLARATORY
RELIEF AND PETITION FOR WRIT
OF MANDATE**

1 to develop healthy perspectives on body image, gender roles, adolescent development, sexual
2 orientation, dating, marriage and family.

3 5. Respondent District provides both sexual health and HIV/AIDS prevention
4 education, which is combined for its high school students.

5 6. Respondent District's high school curriculum consists primarily of chapters from
6 *Lifetime Health*, a 2004 textbook published by Holt, Rinehart and Winston for a national high
7 school population (the "Holt Textbook"). The Holt Textbook promotes the abstinence-only policy
8 many states—but not California—pursued a decade ago, when federal funding was offered for
9 abstinence-only programs. The Holt Textbook teaches that people (including consenting adults)
10 should refrain from sexual intimacy until they are married. It omits any information about
11 condoms and contraception. It recommends various lifestyle behaviors to help prevent STD
12 infection, including "practice abstinence" and "get plenty of rest," but fails to mention using
13 condoms. For this reason, the California Department of Education has advised other school
14 districts that the Holt Textbook does not meet the legal requirements of the Education Code. The
15 Department of Education has also advised that the sections of this textbook that relate to sexual
16 and reproductive health "may not be taught, even if supplemented with other material."

17 7. Respondent District allows teachers to supplement the Holt Textbook with optional
18 approved materials, such as videos. Even if used, however, the supplements do not bridge gaps
19 between the Holt Textbook and the information required under California law. Nor do the
20 supplements render the Holt Textbook acceptable under law. Indeed, many of the approved
21 videos independently violate the Education Code by themselves presenting inaccurate and biased
22 information.

23 8. Concerned parents have asked Respondent District for years to implement a sexual
24 health and HIV/AIDS prevention curriculum that provides all Clovis students with the medically
25 accurate information they need and are entitled to receive under California law to make informed
26 decisions about relationships, body and health. Respondent District has rebuffed the parents'
27 numerous requests to improve sexual health and HIV/AIDS prevention education, and, indeed, has
28 done nothing whatsoever to change its high school curriculum. This action is brought to compel

1 Respondent District to bring its sexual health education and HIV/AIDS prevention instruction into
2 compliance with the Education Code.

3 **PARTIES**

4 9. Petitioner and Plaintiff American Academy of Pediatrics, California District IX
5 (“AAP”) is a nonprofit organization of more than 5,000 board-certified pediatricians living and/or
6 practicing in California. Its mission is to attain optimal physical, mental and social health and
7 well-being for all infants, children, adolescents and young adults. AAP brings this suit on behalf
8 of itself and its member physicians, who treat California adolescents who need sexual health care
9 and counseling.

10 10. Petitioner and Plaintiff Gay-Straight Alliance Network (“GSA Network”) is a non-
11 profit organization with over 850 school-based Gay-Straight Alliance clubs. GSA Network exists
12 to support, strengthen and sustain school-based Gay-Straight Alliances and their fight to end
13 intolerance, discrimination, harassment and violence in schools, particularly towards lesbian, gay,
14 bisexual and transgender (“LGBT”) individuals. Two high schools within Respondent District
15 (Buchanan High School and Clovis High School) have Gay-Straight Alliance clubs, whose
16 members have taken or will take sexual health education and HIV/AIDS prevention instruction.
17 GSA Network brings this suit on behalf of itself and its members.

18 11. Petitioner and Plaintiff Mica Ghimenti is the mother of children who attend
19 Respondent District schools and who will take sexual health and HIV/AIDS prevention education
20 classes. Ms. Ghimenti is a reproductive health educator. Ms. Ghimenti has been assessed, is
21 liable to pay and has paid taxes on real property within the geographical boundaries of the
22 Respondent District within the past year.

23 12. Petitioner and Plaintiff Aubree Smith is the mother of a child who attends a
24 Respondent District school. Ms. Smith is a registered nurse who provides care to women in labor
25 and delivery. Ms. Smith has been assessed, is liable to pay and has paid taxes on real property
26 within the geographical boundaries of the Respondent District within the past year. Together, Ms.
27 Ghimenti, and Ms. Smith are “Parent Petitioners.”

28

1 20. Teen birth rates are particularly high in rural areas of California, such as the Central
2 Valley. *Id.* According to the most recent available statistics, between 2000 and 2008, Fresno
3 County, where Respondent District is located, has ranked among the top nine counties in
4 California for 15- to 19-year-old birth rates. Cal. Dept. of Pub. Health, *2000–2008 Birth Rates for*
5 *Females Ages 15–19 by LHJ and Race/Ethnicity* (Mar. 17, 2010),
6 <http://www.cdph.ca.gov/data/statistics/Documents/STD-Data-BirthRates-Females-1519.pdf>. In
7 2010, the Central Valley had the highest teen birth rate of any California region, at 41.6 births per
8 thousand. Pub. Health Inst., Ctr. for Research on Adolescent Health & Dev., *No Time for*
9 *Complacency: Teen Births in California, 2012 Spring update*, 2 (Spring 2012),
10 [http://teenbirths.phi.org/2012TeenBirthsReport\(2010data\).pdf](http://teenbirths.phi.org/2012TeenBirthsReport(2010data).pdf).

11 21. While 15- to 24-year-olds account for approximately 25% of the sexually-active
12 population, they account for 48% of new cases of STD infection each year. Guttmacher Inst.,
13 *Facts on American Teens' Sexual and Reproductive Health*, at 2. The rate of STD infection
14 among California's 15- to 19-year-old population has increased from 2000 to 2009. Cal. Dept. of
15 Pub. Health, STD Control Branch, *Sexually Transmitted Diseases in California, 2009* (November
16 2010), <http://www.cdph.ca.gov/data/statistics/Documents/STD-Data-2009-Report.pdf>.

17 22. In Fresno County, while 15- to 19-year-olds constituted only 8.3% of females and
18 8.7% of males in the 2010 population, this age group accounted for 34.6% of chlamydia cases
19 among females and 22.2% among males and 29.5% of gonorrhea cases among females and 18.9%
20 among males. Cal. Dept. of Pub. Health, *California Local Health Jurisdiction STD Data*
21 *Summaries, 2010 Provisional Data – Fresno County – Chlamydia, Gonorrhea, and Early Syphilis*
22 *Cases and Rates Tables for 2010* (July 2011),
23 <http://www.cdph.ca.gov/data/statistics/Documents/STD-Data-LHJ-Fresno.pdf>. In 2009, Fresno
24 County had the second highest rate of reported chlamydia infections in California. Cal. Dept. of
25 Pub. Health, *Sexually Transmitted Diseases in California 2009*, *supra*. Fresno also has the second
26 highest chlamydia infection rate in California among 15- to 24-year-olds, at 3,711.3 per 100,000.
27 *Id.*

28

1 23. Between 2006 and 2009, approximately 50,000 people in the United States were
2 infected with HIV per each year. Ctr. for Disease Control & Prevention, *CDC Fact Sheet:
3 Estimates of New HIV Infections in the United States, 2006-2009*,
4 <http://www.cdc.gov/nchhstp/newsroom/docs/HIV-Infections-2006-2009.pdf>. A Center for
5 Disease Control analysis indicated that the rate of new HIV infections would significantly increase
6 if current prevention efforts were not intensified due to the growing number of people already
7 infected with HIV. *Id.* Young MSM (or men who have sex with men), ages 13–29, represent
8 more than one quarter of all new HIV infections every year. *Id.* California has the second highest
9 HIV/AIDS infection rate in the United States, with an estimated 190,000 people living with HIV
10 (including those with and without AIDS) as of April 30, 2009. Cal. Dept. of Pub. Health,
11 *California HIV/AIDS Statistics*, [http://www.caresclinic.org/hiv/aids/california-hiv-aids-](http://www.caresclinic.org/hiv/aids/california-hiv-aids-statistics.html)
12 [statistics.html](http://www.caresclinic.org/hiv/aids/california-hiv-aids-statistics.html).

13 24. As of March 31, 2012, Fresno County had a total of 601 reported cases of HIV, 134
14 of which occurred in individuals under 24 years old. Dept. of Pub. Health, Cnty. Health Div.,
15 *Cumulative Reported HIV Cases April 2006 to March 31, 2012*. As of March 31, 2012, Fresno
16 County had a total of 1,940 reported AIDS cases, 115 of which were individuals under 24 years
17 old. Dept. of Pub. Health, Cnty. Health Div., *Cumulative Reported AIDS Cases February 1983 to
18 March 31, 2012*.

19 25. In past years, the state of California funded community-based sexual health
20 education programs in the state’s teen birth and STD “hot spots,” including the Central Valley.
21 However, these programs have been eliminated indefinitely until the state’s budget picture
22 improves. Thus, school-based HIV/AIDS prevention and sexual health education is the only
23 source of accurate information on STD infections, as well as birth control and pregnancy, now
24 available to many students in Clovis.

25 ***The failure of abstinence-only sexual health education.***

26 26. A 2007 Congressionally-mandated evaluation of the federal abstinence program
27 found that abstinence-only sexual health education did nothing to (a) reduce the rate of sexual
28 activity among teenagers or (b) increase knowledge and awareness of STDs. *See generally*

1 Mathematica Policy Research, Inc., *Impacts of Four Title V, Section 510 Abstinence Education*
2 *Programs*, Final Report to U.S. Dept. of Health & Human Servs. (April 2007). Students who
3 participated in abstinence-only education programs were no more likely than students who
4 received no sexual health education to abstain from sexual activity. *Id.*, p. xvii. Students who
5 participated in abstinence-only education and nonetheless chose to engage in sexual intercourse
6 had similar numbers of sexual partners and initiated sex at the same mean age as those students
7 who did not receive any abstinence-only education. *Id.* Rates of unprotected sex did not differ
8 among those students who participated in the abstinence-only education programs and those who
9 did not. *Id.*, p. xviii.

10 27. Indeed, students who participated in abstinence-only education were *less likely* than
11 those who received *no sexual health education at all* to report that condoms were usually effective
12 at preventing STDs. *Id.*, p. xx. Students who participated in abstinence-only education programs
13 were more likely to report that condoms were *never* effective at preventing STDs than those who
14 had received no sexual health education at all. *Id.*

15 28. Research increasingly shows that medically accurate, comprehensive sexual health
16 education is effective at reducing adolescent sexual risk behaviors and improving the overall
17 health and well-being of the country's young adults. A 2008 analysis of studies comparing
18 abstinence-only and comprehensive sexual health education curricula found that more than two-
19 thirds of the comprehensive programs had a significant impact on one or more desired sexual
20 behaviors, such as delaying the initiation of sex, increasing condom use, and reducing sexual risk-
21 taking. Douglas Kirby, *The Impact of Abstinence and Comprehensive Sex and STD/HIV*
22 *Education Programs on Adolescent Sexual Behavior*, Sexuality Research & Social Policy, Sept.
23 2008, at 18, 24. In contrast, abstinence-only curricula had no overall impact on these sexual
24 behaviors. *Id.*

25 29. Moreover, female students who receive comprehensive sexual health education are
26 significantly more likely to use condoms during their first sexual encounter than those who receive
27 abstinence-only education. Laura Duberstein Lindberg & Isaac Maddow-Zimet, *Consequences of*
28 *Sex Education on Teen and Young Adult Sexual Behaviors and Outcomes*, 2012 Guttmacher Inst.

1 1, 11. Comprehensive sexual health education is also associated with increased condom use
2 among male students, in addition to a decreased likelihood of a sex partner becoming pregnant and
3 decreased likelihood of recent treatment for STDs. *Id.* at 13. As the authors conclude, “[t]he
4 protective influence of sex education is not limited to the questions of if or when to have sex, but
5 extend to issues of partner selection, contraception use, and reproductive health outcomes.” *Id.* at
6 16. The positive effects of comprehensive sexual health education curricula are extensive and far-
7 reaching, affecting lives long after young people leave the halls of their local school.

8 **California Law**

9 30. California’s public policies reflect the empirical conclusion that comprehensive
10 sexual health education benefits students. In 1995, after an extensive evaluation demonstrated that
11 California’s then abstinence-only program entitled Education Now and Babies Later (ENABL)
12 program was ineffective, Governor Wilson canceled it and initiated state support for more
13 comprehensive sexual health education, teaching about both abstinence and contraception through
14 the state’s Teen Pregnancy Prevention programs. The comprehensive approach had substantial
15 support from medical and educational organizations, service providers and parents. California is
16 the only state in the country that has never accepted federal funding to promote abstinence-only
17 sexual health education.

18 31. In 2003, the California Legislature passed the Act, amending the Education Code to
19 require that all sexual health instruction in public schools be medically accurate, free of bias and
20 comprehensive. The Act repealed a number of conflicting provisions on HIV/AIDS prevention
21 and sexual health education and replaced them with a uniform, clear set of standards and
22 procedures for California schools.

23 32. The Act requires public schools to teach HIV/AIDS prevention at least once in
24 middle or intermediate school and once in high school. (Ed. Code, § 51934(a).) The instruction
25 “shall accurately reflect the latest information and recommendation from the United States
26 Surgeon General, the federal Centers for Disease Control and Prevention and the National
27 Academy of Sciences and shall include,” among other things, “statistics based on the latest
28 medical information citing the success and failure rates of condoms and other contraceptives in

1 preventing sexually transmitted HIV infection” and local resources for the testing and treatment of
2 STDs. (Ed. Code, § 51934(b).)

3 33. The Act requires that sexual health education classes, starting in grade 7, teach both
4 the benefits of abstaining from sexual activity and information needed by sexually active students,
5 including “medically accurate information on other methods of preventing pregnancy and sexually
6 transmitted diseases.” (Ed. Code, § 51933(b)(8).) Students must learn the “effectiveness and
7 safety” of all FDA-approved methods of reducing the risk of STD transmission and pregnancy,
8 “including emergency contraception.” (Ed. Code, § 51933(b)(10).)

9 34. The Act requires, for both HIV/AIDS prevention and sexual health education, that
10 factual material be medically accurate, current and objective, that teachers possess up-to-date
11 scientific information on sexual health and reproduction, and that curricular materials be
12 appropriate for students of all sexual orientations. (Ed. Code, §§ 51933(b)(2), 51931(f),
13 51933(b)(4).) As provided in the Act, schools “shall teach respect for marriage and committed
14 relationships.” (Ed. Code, § 51933(b)(7).)

15 35. The Act establishes a specific “streamlined” procedure for parental excusal of
16 students from HIV/AIDS prevention and sexual health education classes. (Ed. Code, § 51937.)
17 School authorities must make sexual health and HIV/AIDS prevention education materials
18 available for parents to review and must excuse students from these classes (and give them
19 alternate instruction) if parents submit written forms requesting that their children be excused.
20 (Ed. Code, § 51938–39.) In the absence of written excusal requests, students are entitled to
21 HIV/AIDS prevention education and to sexual health education, assuming the latter is offered by
22 the District. (Ed. Code, § 51938.)

23 **The District’s Sexual Health and HIV/AIDS Prevention Education**

24 36. Although the Act has been in effect for more than eight years, Respondent
25 District’s sexual health and HIV/AIDS prevention education do not comply with the Education
26 Code. Respondent District has reacted to repeated efforts to improve its sexual health and
27 HIV/AIDS prevention instruction from concerned and knowledgeable parents and expert
28 organizations—Plaintiffs and Petitioners here—with a combination of delay, obstruction and

1 dismissive rejection. Any modifications that were made have been insufficient for purposes of
2 Code compliance. At present, the high school instruction presents students with outdated,
3 ideologically driven, biased and inaccurate materials.

4 ***The Holt Textbook.***

5 37. The high school sexual health and HIV/AIDS prevention curriculum centers on the
6 Holt Textbook. The Holt Textbook contains only one unit (four chapters) on sexual health, with
7 the remaining five units (seventeen chapters) of the book covering other aspects of health, such as
8 self-esteem, nutrition and drug abuse. With respect to sexual health, the Holt Textbook presents
9 an abstinence-only program: the entire chapter on teen relationships is focused solely on sexual
10 abstinence until marriage. Holt Textbook at 454–73. In the chapter entitled “Risks of Adolescent
11 Sexual Activity,” the Holt Textbook instructs that abstinence is the way to “protect your future.”
12 *Id.* at 479. Throughout, the Holt Textbook fails to include required information about
13 contraception and condoms.

14 38. The Holt Textbook does not provide medically accurate, objective or
15 comprehensive information on STD prevention. For example, the Holt Textbook describes the
16 symptoms and treatment of bacterial, viral and parasitic STDs, but it does not ever mention
17 condoms, which are FDA-approved for STD prevention. Instead, the section entitled “Preventing
18 STDs” is silent with respect to *any* FDA-approved STD prevention methods, relying exclusively
19 on abstinence and suggestions that students “Respect Yourself,” “Get plenty of rest,” and “Go out
20 as a group.” *Id.* at 482–83.

21 39. The Holt Textbook does not provide medically accurate, objective or
22 comprehensive information on HIV/AIDS prevention. For example, the Holt Textbook describes
23 methods of transmission and symptoms of HIV/AIDS, but under the heading “Preventing HIV and
24 AIDS,” it does not mention condoms, listing only “1. Practice abstinence,” “2. Avoid multiple
25 partners,” advising that “when a couple is ready for marriage, both partners should maintain a
26 monogamous relationship,” “3. Don’t share needles . . . or any items that may put a person in
27 contact with blood,” and “4. Avoid drinking alcohol and taking illegal drugs.” *Id.* at 505–06.

28

1 40. The Holt Textbook does not provide medically accurate, objective or
2 comprehensive information on pregnancy prevention. The chapter on “Reproduction, Pregnancy,
3 and Development” addresses the medical aspects of pregnancy, but does not discuss any FDA-
4 approved contraceptive methods, instead focusing exclusively on abstinence. *Id.* at 428–53.
5 While “Teen Pregnancy” is discussed in the chapter addressing “Risks of Adolescent Sexual
6 Activity,” in which teens are advised that “Abstinence Eliminates the Risks of Teen Sexual
7 Activity,” there is no information about any methods of contraception whatsoever. *Id.* at 474–93.
8 A single page of the Holt Textbook mentions the birth control pill, but only to note that “Birth
9 control pills do not provide protection against STDs.” *Id.* at 485.

10 41. The Holt Textbook reflects bias against gay, lesbian, and bisexual people. For
11 example, the Holt Textbook lists a number of types of families, but does not include same-sex
12 households in its list. *Id.* at 419–20. The Holt Textbook also emphasizes abstinence from sexual
13 activity until marriage, which it defines as “a lifelong union between a husband and a wife.” *Id.* at
14 410. None of the discussions of sexual behavior or relationships discuss same-sex couples.

15 ***The District-approved optional supplements.***

16 42. Respondent District has approved 21 supplementary videos for sexual health
17 instruction. A list of those materials is attached hereto as Exhibit A. None of these materials is
18 required for any particular class; rather, Respondent District adopts an “a la carte menu” approach
19 where teachers are free to choose some, all or none of these approved materials.

20 43. The supplementary materials do not, and could not, cure the defects of the Holt
21 Textbook. In addition, the majority of the approved supplementary materials independently
22 violate California’s Education Code. For example:

- 23 a. The video “Never Regret the Choice” advances an abstinence-only
24 program, teaching students that “something bad will happen” if adolescents choose to have
25 sex outside of marriage and encouraging them to adopt the mantra “One man, one woman,
26 one life.” The speaker advises teens not to engage in any sexual interaction at all because
27 boys and men are physically unable to stop once they have become sexually excited
28

1 through sexual contact. This same video tells girls that “how you dress sends a strong
2 message” and “can put you in a bad situation.”

3 b. The video series “Go A.P.E.” includes medically inaccurate information
4 about STDs, and provides biased information with regard to gender and sexual orientation.
5 For example, one of the episodes in the series has a scene portraying a man and woman
6 exchanging gifts on their wedding night. The man presents the woman with a brand new,
7 white pair of shoes, saying that he saved them for her. The woman’s gift to the man,
8 however, is a dirty, used pair of shoes. The man is visibly upset, and when the woman
9 tries to reassure him that she wore socks while using them, he replies that socks do not
10 protect against all types of foot fungus. The not-so-subtle metaphor is that a husband
11 would be devastated to learn that his wife is not a virgin, and that this fact could result in a
12 marriage-ending crisis.

13 c. The video “Real People: Teens Who Choose Abstinence” was specifically
14 cited by the California Department of Education as non-compliant with the Education
15 Code and thus a video that “may not be used due to medical inaccuracies.” It also was
16 rejected by a state panel in Minnesota for approval in that state’s schools due to inaccurate
17 information on HIV and AIDS, in addition to being abstinence-only and containing gender
18 bias.

19 d. Several videos on HIV/AIDS are so outdated (having been produced
20 decades ago) that they are no longer medically accurate and misleadingly portray
21 HIV/AIDS as a disease with a short life expectancy and no or few options for treatment.
22 One video, “Ryan White talks to Kids about AIDS,” was filmed in 1988 and portrays a
23 teen who contracted HIV/AIDS through a blood transfusion. Aside from the fact that
24 infections from blood transfusions have not been common in the U.S. since the 1980s, the
25 video includes inaccurate and outdated descriptions of restrictions on teens living with
26 HIV/AIDS, such as that he cannot participate in sports and must use a separate bathroom
27 from other students. Another video, “HIV & Teens: Remembering Krista Blake,” was
28 published in 1997 and tracks the progression of AIDS in a young woman from contracting

1 HIV at 16 to her death at 22. Among other inaccuracies, Ms. Blake is shown saying
2 (incorrectly) that the difference between HIV and AIDS is mental attitude. Furthermore,
3 Ms. Blake's experience is portrayed as typical, while the current treatment of HIV and
4 AIDS means that the average life expectancy is well beyond six years.

5 e. Several of the approved supplemental videos reflect gender bias by
6 espousing the view that girls are more emotional than boys and are looking for love, while
7 boys are only interested in sex.

8 44. None of the supplementary materials discusses methods of contraception or their
9 success and failure rates. None of the supplementary materials discusses same-sex relationships or
10 non-marital relationships.

11 45. To the extent any individual instructors have chosen to discuss condoms or other
12 methods of contraception with their students, any materials they have used are neither mandatory
13 nor part of the Respondent District-approved curriculum.

14 46. In any case, the violations and deficiencies of the Holt Textbook cannot be
15 remedied by adopting and using supplemental materials because any curriculum using the Holt
16 Textbook cannot comply with the Code.

17 47. Curricular materials that comply with California law are free and widely available.
18 Moreover, the California Departments of Education provides funding and reimbursement of costs
19 associated with providing the required HIV/AIDS prevention education. *See*
20 <http://www.cde.ca.gov/ls/he/se/hivreimburse.asp>.

21 ***The excusal policies.***

22 48. The Act established a uniform "opt-out" procedure for HIV/AIDS prevention and
23 sexual health education to allow parents to excuse their children from instruction. Rather than
24 following this procedure, however, Respondent District places the burden on parents to return
25 written forms affirmatively requesting that students obtain sexual health education in order for
26 their children to be permitted to access this education in both intermediate and high school.
27
28

1 *Parents' attempts to bring Respondent District into compliance.*

2 49. Respondent District has been well aware of—but largely ignored—parents'
3 articulated concerns regarding the quality of its HIV/AIDS prevention and sexual health education
4 curricula for years.

5 50. Beginning in at least the 2007–2008 school year, Respondent District implemented
6 curriculum and hired instructors from Teen Choices, Inc. for its intermediate schools. The Teen
7 Choices program is replete with outdated, inaccurate, biased information. Indeed, the
8 California Department of Education has twice found the Teen Choices program noncompliant with
9 state law, after auditing it in other Central Valley school districts (Selma and Dinuba). Starting in
10 2009, Petitioner Ghimenti outlined her concerns with the curriculum and instruction provided by
11 Teen Choices to Rick Watson, Respondent District's Administrator for Curriculum Services and
12 Professional Development. For over one year, Respondent District resisted not only a change to
13 its curriculum, but also a dialogue with Ms. Ghimenti and other concerned parents.

14 51. From March 2011 through June 2011, Petitioner Ghimenti and/or Petitioner Smith
15 sought meetings with Respondent District's then-Superintendent David Cash, met with Mr.
16 Watson, spoke at a public meeting of the Governing Board of Respondent District, and met with
17 Respondent District's Family Life Advisory Committee to voice their concerns that Respondent
18 District's HIV/AIDS prevention and sexual health education curricula did not comply with the
19 Education Code. Parent Petitioners wrote Respondent District a letter with specific requests,
20 including the removal of the Holt Textbook and the Teen Choices program and the revision of the
21 parental consent policy; this letter was signed by a number of concerned parents and community
22 members. Respondent District officials rebuffed Parent Petitioners' requests, and even refused to
23 allow parents to copy curricular materials so that they could evaluate them more fully.

24 52. Only following a formal demand letter sent in August 2011 by lawyers representing
25 AAP and concerned parents did Respondent District change the intermediate school curriculum.
26 While it replaced Teen Choices, Respondent District has implemented a new intermediate school
27 curriculum that continues to raise concerns about its compliance with the Education Code.

28

1 **THIRD CAUSE OF ACTION**

2 *(Writ of Mandate)*

3 70. Petitioners incorporate by reference the allegations of paragraphs 1 through 61 of
4 this Complaint and Petition, as though set forth fully in this paragraph.

5 71. Petitioners are entitled to a writ of mandate commanding Respondent District to
6 comply with the Act by replacing its current high school HIV/AIDS prevention and sexual health
7 education curriculum with a curriculum that complies with Act.

8 72. Petitioners are entitled to a writ of mandate commanding Respondent District to
9 comply with the Act by replacing its current "opt-in" excusal procedure for its sexual health
10 education classes with the "opt-out" procedure established in the Act.

11 **PRAYER FOR RELIEF**

12 Plaintiffs and Petitioners request that this Court:

13 A. Issue an alternative writ of mandate and/or order to show cause ordering
14 Respondent District to comply with the Act, or, in the alternative, to show cause why a
15 peremptory writ as set forth below should not issue;

16 B. Upon return of the alternative writ and/or hearing on the order to show cause, or
17 alternatively in the first instance, issue a peremptory writ ordering Respondent District to comply
18 with the Act by adopting a compliant high school HIV/AIDS prevention and sexual health
19 curriculum and a compliant sexual health education excusal procedure;

20 C. Declare that Respondent District's high school HIV/AIDS prevention and sexual
21 health education curriculum violate the Act;

22 D. Declare that Respondent District's intermediate and high school sexual health
23 education excusal procedures violate the Act;

24 E. Issue an injunction restraining Respondent District from teaching a noncompliant
25 HIV/AIDS prevention and sexual health education curriculum;

26 F. Issue an injunction restraining Respondent District from requiring affirmative
27 consent for intermediate and high school students to attend sexual health education classes;

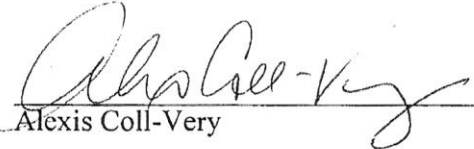
28

1 G. Award Plaintiffs and Petitioners reasonable attorneys fees and costs pursuant to
2 California Code of Civil Procedure § 1021.5;

3 H. Award Plaintiffs and Petitioners any additional relief this Court deems just, proper,
4 and equitable.

5
6 Dated: August 21, 2012

SIMPSON THACHER & BARTLETT LLP

7
8 By 
9 Alexis Coll-Very

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VERIFICATION

I, Mica Ghimenti, declare:

I am a plaintiff and petitioner in this case. I have read the Verified Complaint for Injunctive and Declaratory Relief and Petition for Writ of Mandate (the "Complaint and Petition") filed with this Verification and know its contents. The matters stated in the Complaint and Petition are true of my own knowledge, except as to those matters which are alleged on information and belief, and as to those matters, I believe them to be true.

I declare under penalty of perjury under the laws of the state of California that the foregoing is true and correct.

Executed this 20th day of August, 2012, in Clovis, California.


Mica Ghimenti

EXHIBIT A

Clovis Unified School District

Family Living Education District Approved Supplementary Materials List

HIGH SCHOOL

| Grade | Subject | Curriculum Type | Curriculum Title | Instructor | Date of Board Approval |
|------------------------------------|---------|---------------------------|--|------------|---------------------------------------|
| 9 th & 10 th | | Video Supplementary | HIV & Teens - Remembering Krista Blake | | 2-9-2000 |
| | | Video Supplementary | "Sexual Abstinence" | | 9-1994 |
| | | Video Supplementary | "The Miracle of Life" | | 9-1994 |
| | | Video Supplementary | "Real People: Teens Who Choose Abstinence" | | 2-9-99 |
| | | Video Supplementary | "Teenage Sex: 'Resisting the Pressure' " | | 9-1994 |
| | | Video - Supplementary | "AIDS: What Everyone Needs To Know" | | 9-1994 |
| | | Supplementary Curriculum | No Apologies - The Truth About Life, Love & Sex | | 8-11-2004 |
| | | Video - Supplementary | "Sexual Abstinence: Making the Right Choices" | | 9-1994 |
| | | Video - Supplementary | "Teenage Crises" | | 9-1994 |
| | | Video Set - Supplementary | Video Series of 3 <ul style="list-style-type: none"> • "What you Don't Know Can Kill You" • "Sexually Transmitted Diseases" • "AIDS" | | 9-1994 |
| 10 th -12 th | | Video - Supplementary | "Ryan White Talks to Kids About AIDS" (located at Clark Library) | | 9-1994 |
| | | Power Pt. | STD: 101 | | Spring 2007 |
| | | Video - Supplementary | "Flour Babies" | | 9-1994 |
| | | Video - Supplementary | "Look Who's Balking: The Baby Who Wouldn't Come Out" | | 9-1994 |
| | | Video - Supplementary | "Rock-a-bye" | | 9-1994 |
| | | (CD) | Life Begins: An Amazing Multimedia Journey: Conception to Birth | | 5/11/00 Dr. Boris Board Sub-committee |
| | | Video Supplementary | Go A.P.E. (Abstinence Protects Everyone) Volume I - VIII & Facilitator's guide | | August 11, 2004 |
| 9 th - 12 th | | Video Supplementary | No Apologies- The Truth About Life, Love & Sex | | August 11, 2004 |
| | | Video Supplementary | Never Regret the Choice (by Jeffrey Dean) | | August 11, 2004 |
| | | Video Supplementary | Straight Talk About STD's- The Unprotected Truth (by Nimco, Inc.) Volume 1,3,4,5,7,8 | | August 11, 2004 |
| | | Video - Supplementary | Reality Matters - Sex & STDS | | 6/2007 |
| | | DVD - Supplementary | Sex Still Has A Price | | 6/2007 |

Clovis Unified School District

**Family Living Education
District Approved Supplementary Materials List**

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|--|-----------------------------|--|--------|
| 9 th - 12 th (continued) | Power Point - Supplementary | STD 101 | 6/2007 |
| | DVD | "Conception to Birth" | 7/2009 |
| | DVD | " In The Womb" (located at CNHS Library) | 7/2009 |
| | DVD | Nova- "The Ultimate Journey" | 8/2011 |