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## Modernizing the Birds and the Bees: New Standards for Sexual Education

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## MODERNIZING THE BIRDS AND THE BEES: NEW STANDARDS FOR SEXUAL EDUCATION

*Ashley Whetten<sup>1</sup> and Katie Whitehead<sup>2</sup>*

Most United States high school graduates share the distinct memory of sitting in a classroom with their peers and learning about how puberty will affect their bodies. These memories include recollections of hushed giggles, nervous teachers, pads, tampons, and deodorant. Experiences range from the dreaded maturation night with your parents to gym teachers or school nurses talking about sexual intercourse, explaining that sex is a beautiful thing, or warning that sex will surely lead to a sexually transmitted disease, or worse, a pregnancy. Some parents continued the conversations at home, others did not. Yet, the negative effects of a deficient sexual education, namely unwanted pregnancies, high abortion rates, sexually transmitted diseases, and high sexual assault rates, continue to plague our youth. Conversations concerning these issues usually center on which approach to sexual education could best help to combat them.

Solutions have become divided into two schools of thought: those who advocate for abstinence-only sexual education and those who advocate for a more comprehensive sexual education. Those who advocate for a more comprehensive sexual education argue that the rate of youth sexual activity warrants schools providing increased information regarding sexuality outside the bounds of

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abstinence-only. During the 2021 Utah Legislative Session, Representative Carol Moss proposed HB177 which would require schools in the state to teach consent in their sexual education curriculum.<sup>3</sup> The proposed bill garnered intense scrutiny in the predominantly conservative legislature. Despite attempts from Representative Moss and her Democratic caucus to compromise with the Republican opposition, the bill failed on the floor. Republican representative Merrill Nelson stated, “I think this bill is headed in the wrong direction, something better left to professionals who understand the legal concept of consent, and to parents who better know their child”.<sup>4</sup> This episode in Utah politics reflects the fierce debate in America regarding sexual education.

Studies offer conflicting evidence about the efficacy of abstinence-only and comprehensive sexual education. While the debate about which approach best suits American youth continues, gaps remain in the sexual education system. This paper does not argue for one approach to sexual education over another; instead, the proposals in this paper aim to bridge these long-standing disputes by creating a new standard of sexual education that also addresses the major downfalls of both current curricula. Various components of sexual education represent areas neglected by the law and that, if addressed, will significantly help students obtain accurate and science-based information about sexuality.

To encompass these necessary changes, this paper proposes that Abstinence-Only Until Marriage (AOUM) programs, which will be discussed at length later in the paper, should be disbanded and their funding be reallocated to a less restrictive, science-backed program that allows for greater state autonomy in deciding sexual education curriculum. We argue for a less restrictive environment that would be conducive to innovation in sexual education programs. To facilitate this, we propose the following three prescriptive changes to sexual education in the United States. First, states should require sexual education before high school graduation. Second, federal funds and

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3 H.R. 177, Leg. 64th Sess. (Ut. 2021).

4 Marjorie Cortez, *Even After Dropping Teaching of Consent, House Defeats Controversial Sex Ed Bill*, *Deseret News*, Feb. 26, 2021.

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standards should be focused on providing schools with educators better equipped to teach the complexities of sexual education, regardless of the values the state or school prescribes to. Finally, there should be increased parental involvement in the course curriculum. These federal standards will significantly help the development of sexual education programs by fostering an environment where new education programs can incorporate science-backed methods for effective sexual education.

This paper will begin with a brief history of sexual education in the United States to the present day, highlighting pertinent bills and grant programs in recent years. Shortcomings of the two major sexual education curricula are expounded. Following that, the paper will discuss how to implement these changes at the federal level and the benefits such changes will provide. Then, an explanation for the value of the three provisions proposed for a new federal funding program will follow.

## I. HISTORY OF SEXUAL EDUCATION

Sexual Education in the United States can be traced back to World War I. Among American soldiers the spread of Sexually Transmitted Diseases (STDs) became a significant issue. To combat this issue, Congress passed the Chamberlain-Kahn Act of 1918 which served as a public health plan to educate soldiers on the dangers of venereal diseases.<sup>5</sup> The efforts proved effective in decreasing STDs among soldiers. Because of the success of this concerted effort to educate about STDs, state agencies--along with the cooperation of the Public Health Board--began implementing educational programs about STD prevention. These efforts became the first time the government implemented community sexual education and influenced programs now taught today outside of schools but funded by the government at

locations such as Planned Parenthood facilities, churches, and community centers.<sup>6</sup>

Sexual education continued to develop, and, in 1981, Congress passed the American Family Life Act (AFLA) which promoted and provided funding for abstinence-only sex education.<sup>7</sup> In *Bowen v. Kendrick*, the Supreme Court ruled for the first and only time on the constitutionality of federal funds used for abstinence-only sex education programs. This case specifically challenged the use of funds by grantees through the AFLA.<sup>8</sup> The suit, brought to the Supreme Court by the American Civil Liberties Union (ACLU) on behalf of federal taxpayers, clergymen, and the American Jewish Congress, argued that the AFLA violated the Establishment Clause of the 1st Amendment.<sup>9</sup> The ACLU argued that the Court should strike down the AFLA in its entirety because it violated the separation of church and state created by provisions that required grantees to dictate how they would include religion in their sexual education programs and allocate money to specific religious groups. Because these funds benefitted specific religious groups, the Supreme Court ruled that the AFLA was in violation of the Establishment Clause. While the Supreme Court did rule that the primary effect of the AFLA was not the advancement of religion, and that there was no unnecessary entanglement of church and state, they still argued against the misuse of funds and remanded the case back to the District Court for further decision and resolution.<sup>10</sup>

The federal government funds state sexual education programs through two separate types of federal grant streams: Abstinence-Only Until Marriage (AOUM) programs and Adolescent Sexual

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6 Valerie Huber, A Historical Analysis of Public School Sex Education in America Since 1900, MASTER OF EDUCATION THESES & PROJECTS (2009) 16, [http://digitalcommons.cedarville.edu/education\\_theses/21/](http://digitalcommons.cedarville.edu/education_theses/21/).

7 Social Security Act, H.R. 3982, 97th Cong. § 300z (1981).

8 *Bowen v. Kendrick*, 487 U.S. 589, 617 (1988).

9 H.R. 3982 Pub.L. 97-35.

10 H.R. 3982, Pub.L. 97-35.

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Health Education and Promotion Programs.<sup>11</sup> Since 1996, the federal government has funded abstinence-only programs such as the Title V Sexual Risk Avoidance Education (Title V SRAE) Program<sup>12</sup>. Programs such as this contain rigid restrictions on the contents of sexual education. The federal government requires states and organizations which receive AOUM funding to create programs that are consistent with the ‘A-H’ definition of ‘abstinence education’ prescribed in the Social Security Act.<sup>13</sup> Consequently, states that do not meet each of these requirements forfeit federal funding through AOUM, leaving them to find other means to fund sexual education programs in their schools. The requirements enclosed in AOUM programs incentivize states to teach AOUM sanctioned sexual education rather than choosing other options. Since 1982, the federal government has spent \$2 billion funding AOUM programs.<sup>14</sup> This makes up the bulk of sexual education funding.

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- 11 *Federal Programs Funding Chart FY19 Mar 2019*, Siecus Fact Sheets and Policy Briefs, <https://siecus.org/wp-content/uploads/2019/03/Federal-Programs-Funding-Chart-FY19-Mar-2019.pdf>
  - 12 Social Security Act, 42 U.S.C. § 710 (2018).
  - 13 H.R. 3982, Pub.L. 104-193. (A. Has as its exclusive purpose teaching the social, psychological, and health gains to be realized by abstaining from sexual activity. B. Teaches abstinence from sexual activity outside marriage as the expected standard for all school-age children. C. Teaches that abstinence from sexual activity is the only certain way to avoid out-of-wedlock pregnancy, sexually transmitted diseases, and other associated health problems. D. Teaches that a mutually faithful monogamous relationship in the context of marriage is the expected standard of sexual activity. E. Teaches that sexual activity outside of the context of marriage is likely to have harmful psychological and physical effects. F. Teaches that bearing children out-of-wedlock is likely to have harmful consequences for the child, the child’s parents, and society. G. Teaches young people how to reject sexual advances and how alcohol and drug use increase vulnerability to sexual advances. H. Teaches the importance of attaining self-sufficiency before engaging in sexual activity).
  - 14 *Federal AOUM Funding Table FY19 Oct 2018*, Siecus Fact Sheets and Policy Briefs, <https://siecus.org/wp-content/uploads/2018/10/AOUM-Funding-Table-FY19-Oct-2018-FINAL.pdf>.

Science-based sexual education often draws from research conducted by experts in sexual behavior, and principles found in correct anatomy and physiology practices. This differs from AOUM programs which are founded in traditional cultural norms of sexual behavior. In 2010, President Obama implemented two new science-based sexual education federal funding streams: Personal Responsibility Education Program (PREP) and the Teen Pregnancy Prevention Program (TPPP).<sup>15</sup> These programs fall under Adolescent Sexual Health Education and Promotion Programs. These programs were created to fund and support sexual education programs backed by science and evidence and focus on reducing teen pregnancy. These programs teach abstinence *along with* contraceptive use which is a break from the AOUM approach to sexual education.<sup>16</sup> Prior to the creation of these small federal funding streams, the federal government *only* funded AOUM programs.<sup>17</sup>

During the Trump administration, the use of TPPP funds came into question as President Trump attempted to divert these funds towards abstinence-only sexual education, or, as he rebranded it: “Sexual Risk Avoidance”.<sup>18</sup> In 2017, Trump attempted to eliminate the TPPP altogether through the creation of a budget proposal entitled, “A New Foundation for American Greatness.”<sup>19</sup> This proposal, along with the appointment of Valerie Huber--a prominent leader in the AOUM movement--as Chief of Staff to the Assistant Secretary of Health and Human Services, resulting in the elimination of any science-based sexual education and replacing it with AOUM education. The Trump administration abruptly terminated these funds two years before their set end date. The abrupt elimination of TPPP

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15 *Trump Attempts to Shift TPPP to promote Abstinence-only Ideology*, Siecus Fact Sheets and Policy Briefs, <https://siecus.org/wp-content/uploads/2019/02/TPPP-Timeline-Doc-Feb-2019.pdf>.

16 Social Security Act, 42 U.S.C. § 710 (2018).

17 *Id.* at 710.

18 Siecus, *Trump Attempts to Shift TPPP to promote Abstinence-only Ideology*, Our Work (February 2019), <https://siecus.org/wp-content/uploads/2019/02/TPPP-Timeline-Doc-Feb-2019.pdf>

19 *Id.* at 1.

resulted in multiple lawsuits based on the illegal termination of TPPP funds allocated to various states and organizations. In the many lawsuits that ensued, the courts unanimously ruled in favor of TPPP.

More recently, Senator Cory Booker of New Jersey introduced into the 117th Congress, the Real Education and Access for Healthy Youth Act of 2021.<sup>20</sup> This act attempts to increase access to comprehensive sexual education along with access to sexual and reproductive health services. This act also eliminates AOUM programs such as Title V included in the Social Security Act. To facilitate these changes, the Healthy Youth Act implements a new grant which would allocate federal funding to state education systems and private entities that qualify.<sup>21</sup> The act proposes that the federal funding for this grant be reallocated from the eliminated AOUM programs and funneled into this new, comprehensive sexual education grant. The Healthy Youth Act focuses on providing comprehensive sexual education to marginalized groups, particularly those groups which have historically endured forced sterilization along with sexual and reproductive violence at the hands of the federal government.<sup>22</sup> The act awaits further deliberation in the Senate Committee on Health, Education, Labor, and Pensions along with the entirety of Congress.

State courts have adjudicated most of the cases regarding sexual education. A California case, *American Academy of Pediatrics v. Clovis Unified School District*, challenged whether the Clovis County School District's sexual education program violated California law stating that, "Students have a right to sex education that is complete, medically accurate, and free of bias, and that abstinence-only-until-marriage instruction is unlawful on the grounds of medical accuracy and bias."<sup>23</sup> Because the Clovis County School District implemented an abstinence-only-until-marriage program, the Supreme Court of California held that their program did violate state law. In response,

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20 Real Education and Access for Healthy Youth Act, S.1689, 117 Cong. (2021).

21 *Id.* S.1689, §4-6.

22 *Id.* S.1689, §2. b.8.

23 *American Academy of Pediatrics v. Clovis Unified School Dist.*, 2015 WL 2298565 (Ca. Super. Ct. 2015).

the district made drastic changes to their sex education curriculum resulting in the plaintiffs dropping the charges against the district.

A case in New Jersey, *Smith v. Ricci*, determined the constitutionality of a state requirement to implement sex education in schools.<sup>24</sup> After the New Jersey State Board of Education issued a rule that made it necessary for school districts to create a family life education program that included lessons on sexuality, upset families sued arguing that this requirement violated their right to free exercise of religion. The rule issued by the State Board of Education included a policy that allowed parents to excuse their child from engaging in the lessons, but the plaintiffs did not believe this was sufficient protection. The court ruled in favor of the New Jersey State Board of Education, arguing that the program did not violate their free exercise of religious rights, nor did it violate the Establishment Clause. The court reasoned the opt-out policy sufficiently provided an avenue for any individuals with religious or moral objections to excuse their children from participation. Similar cases in Hawaii and California resulted in decisions which also affirmed the courts' agreement with requirements to teach sexual education with opt-out policies.<sup>25</sup>

## II. WEAKNESSES OF COMPREHENSIVE SEXUAL EDUCATION

The mission of comprehensive sexual education is twofold.<sup>26</sup> The first, is to promote abstinence-only sexual protection among adolescents. The second, is to provide correct and healthy information to adolescents who choose to be sexually active, and to reduce the unwanted effects of sexual activity, such as STDs, abortions, and unwanted pregnancies.

The inability to address both purposes is what renders comprehensive sexual education ineffective. Many comprehensive programs

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24 *Smith v. Ricci*, 89 N.J. 514, 518 (1982).

25 See *Medeiros v. Kiyosaki*, 52 Haw. 436, 437 (1970), See also *Citizens for Parental Rights v. San Mateo City Bd. of Educ.*, 82 A.L.R.3d 544, 547 (Cal. Ct. App. 1975).

26 Stan E. Weed & Irene H. Ericksen, *Re-Examining the Evidence for Comprehensive Sex Education in Schools*, IRE 1, 4 (2019).

in use right now are not able to meet either of the purposes, or they can accomplish one purpose but not the other.<sup>27</sup> This is the case of the “*Cuidate!*” comprehensive education program. This program is geared to help Latinx students understand the risks of HIV and how to prevent contracting it through promoting condom use. One study observed that “*Cuidate!*” succeeded to achieve increased condom use twelve months after the course was taken by students. However, twelve months later, students were also more likely to become sexually active or return to sexual activity if they had previously committed to abstinence during the course. To confirm these results, the study was replicated, and researchers could not duplicate the effectiveness of the program.<sup>28</sup> Often a program in comprehensive education is inaccurately deemed effective, where any positive effect occurs. This is interpreted to be the general impact of the curriculum on both desired outcomes.

Another shortcoming to comprehensive sexual education is the vastly different meanings that are referred to by the term ‘comprehensive.’ People arguing for comprehensive sexual education often do not agree among themselves about what should be taught in the curriculum. Some wish only to include consent and healthy relationships in addition to an abstinence-only curriculum. Others go as far as including sexual orientation, and racism to the list already mentioned. Because of this diverse interpretation of the curriculum in comprehensive sexual education, it becomes difficult to rally people together behind the vague title of “Comprehensive Sexual Education.”

The proposal by Senator Booker for The Real Education and Access for Healthy Youth Act of 2021, is a similar approach to what we will later recommend in ameliorating the issues surrounding sexual education. Senator Booker further proposes to disband AOUM funding in place of a more modern, comprehensive sexual education program. We find two major flaws in the Real Education and Access for Healthy Youth Act. The first, is that the act advocates

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27 *Id.* at 5-6.

28 Meredith Kelsey et al., *Replicating ¡Cuidate!: 6-Month Impact Findings of a Randomized Controlled Trial*, 106 *Am J Public Health* S70, S75 (2016).

for an expansive version of comprehensive sexual education. The curricula that it establishes includes healthy relationship dynamics, LGBTQ+ issues, institutional racism, and contraceptive use.<sup>29</sup> While this certainly falls under the definition of comprehensive, Booker's realization of comprehensive sexual education may not reflect the same values as other proponents of comprehensive education. The second, is that the proposed bill essentially organizes the comprehensive counterpart to AOUM federal funding, which further enforces that schools should comply with either of the pre-existing schools of thought to qualify for funds. This restricts the flexibility to innovate new programs that are better adapted to the needs of our youth. Ultimately, the act is contrary to the goals we aim for which would create more innovation for sexual education, and greater autonomy for school districts to choose the curriculum they teach.

### III. WEAKNESSES OF ABSTINENCE-ONLY UNTIL MARRIAGE PROGRAMS

Abstinence-only is the main form of sexual education taught in the United States school systems.<sup>30</sup> AOUM programs fail to provide students with the necessary information to safeguard them from the risks of sexual behavior. Individuals that prescribe to abstinence-only views regarding sexuality fear that teaching students about contraceptives or the risks of engaging in sex, will encourage greater sexual activity. Public health studies show that informing students about how to engage in safe, protected sex does not lead to adolescent sexual activity.<sup>31</sup> In the United States, the average age of marriage is 8.7 years after a woman's first sexual experience and

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29 S.1689 §2.

30 Alex Mierjeski, *Abstinence Only Sex Education Overlooks Stark Realities*, Health (Sep. 7, 2015), <https://archive.attn.com/stories/3049/abstinence-only-sex-education>.

31 Cora C. Breuner, Gerri Mattson, *Sexuality Education for Children and Adolescents*, 138, Pediatrics, e2, e2-e7 (2016).

11.7 years after a man's first sexual experience.<sup>32</sup> This gap indicates that although the average age of first marriages among American youth is increasing, the average age for first sexual encounters is not. American youth engage in sexual behavior regardless of the type of sexual education they receive. The difference is that in states that teach abstinence, rates of teen pregnancy and sexually transmitted diseases are higher than in states which teach outside the bounds set by AOUM programs.<sup>33</sup>

AOUM programs promote abstinence as the surefire way to avoid unwanted pregnancies and the transmission of STDs. However, the implementation of AOUM programs “violate[s] medical ethics and harm[s] young people” by failing to include science-based research regarding pregnancy, contraceptives, and STDs.<sup>34</sup> AOUM programs fail to prevent young people from engaging in sex and fail to address the needs of youth by not providing them with accurate information about sexuality.

The history of these AOUM programs reflects a deep connection to religious thought on sexuality. The circumstances that preceded the Supreme Court's ruling of *Bowen v. Kendrick* exemplify this connection. Christian rights groups promoted the AOUM movement which began during the Reagan Administration. Further, these groups created and promoted their own abstinence-only programs. The AFLA began to reflect similar ideas as those promoted by Christian rights groups.

The language to qualify for AOUM funding as contained in Title V of the SRAE states that, “Programs must have as their ‘exclusive purpose teaching the social, psychological, and health gains to

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32 *Abstinence Only Education is a Failure*, Child and Adolescent Health, Healthcare Policy, Maternal and Reproductive Health (Aug. 22, 2017) <https://www.publichealth.columbia.edu/public-health-now/news/abstinence-only-education-failure>.

33 Alex Mierjeski, *Abstinence Only Sex Education Overlooks Stark Realities*, Health (Sep. 7, 2015), <https://archive.attn.com/stories/3049/abstinence-only-sex-education>.

34 Laura D. Lindberg & Leslie M. Kantor, *Adolescents' Receipt of Sex Education in a Nationally Representative Sample 2011-2019*, Journal of Adolescent Health, (2022).

be realized by abstaining from sexual”” The Act further states that programs must teach that a “mutually faithful monogamous relationship in the context of marriage is the expected standard of sexual activity,” and that having children “out-of-wedlock is likely to have harmful consequences for the child, the child’s parents, and society.”<sup>35</sup> Not only were the messages tied to religious thought, but religious organizations also received funding from these federal programs which the Supreme Court later struck down. Under these AOUM programs, beneficiaries of funding had to teach principles about sexuality which aligned with those prescribed by Christian rights groups to qualify for funding. These principles were cloaked in messages of deep religious thought and shame regarding sexual activity. These shame messages prove harmful to developing youth and contribute to misunderstandings about sexuality.

#### IV. CURRENT FEDERAL FUNDING PROGRAMS

The United States Federal Government provides funding for sexual education to states through federally funded programs and grants such as the Social Security Act, and more recently the Coronavirus Aid Relief and Economic Security Act (CARES).<sup>36</sup> The states then have the discretion to allocate these funds to school districts under the guidelines each state sets for sexual education. School districts have further discretion in the use of these federal funds and the curricula they decide to implement. However, states are bound by certain requirements depending on which federal program their money comes from. If school districts abide by certain standards, they are awarded these funds. Although school districts are awarded money for sexual education, often, these funds are diverted to other school programs such as school lunches and summer programs. Programs such as these are expensive to maintain but are crucial to the well-being of students. Because AOUM programs are typically heavily

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35 History of Sex Education, Siecus (2021) [https://siecus.org/wp-content/uploads/2021/03/2021-SIECUS-History-of-Sex-Ed\\_Final.pdf](https://siecus.org/wp-content/uploads/2021/03/2021-SIECUS-History-of-Sex-Ed_Final.pdf)

36 Coronavirus Aid Relief and Economic Security Act, H.R. 748, §1 116–136, 134 Stat. 281, (2020).

funded, schools are more enticed to opt into AOUM programs to supplement funding for their schools' needs outside of sexual education, regardless of their values concerning the sexual education curriculum. Although this benefits a schools' other programs, we argue that the sexual education programs in these schools do not meet the needs of the students.

## V. PROOF OF CLAIM

### *A. Reallocation of AOUM Funding*

The stringent requirements for states to qualify for AOUM funding restricts their ability to implement science-backed programs and the autonomy of what sexual education curriculum to teach their youth. Given the overwhelming weaknesses contained in AOUM programs, we propose they should be repealed, and their funding be reallocated to a new program that allows states the discretion to decide what to include in their curricula. The history of AOUM programs' affiliation to harmful messages of shame and religious thought are further reasons to reallocate the funding. Many states rely on AOUM funding for their sexual education programs which indicates that the issues that stem from AOUM are perpetuated throughout the country. To ensure that these states do not lose this funding, we propose that federal money be reallocated to programs that do not contain the stringent requirements that AOUM programs have.

A new program would allow for the flexibility that is needed in a modern sexual education program. This new program would not be biased or based on the religious or philosophical views of any sexual education program. Instead, the standards needed to qualify for federal funding would be standards that foster a healthy environment for how sexual education is taught to youth. These requirements include requiring sexual education for graduation, qualifications for sex educators, and parental involvement in the course. This new standard will allow for innovation while maintaining a level of healthy perspectives on sexuality and while also showcasing multiple perspectives on sexual health.

### *B. Requiring Sexual Education for High School Graduation*

A recent U.S. government study compared pregnancy rates across 21 different countries, and the results indicated that Americans have the highest rate of teen pregnancy, with those highest rates existing among American minorities.<sup>37</sup> The state with the highest rate of teen pregnancy in the United States is Texas. In Texas, the state has no mandate requiring schools to teach sexual education. In Texas, 58.3% of school districts taught abstinence-only to their students, 16.6% taught abstinence-plus, and 25% received no sexual education at all.<sup>38</sup> In contrast, the state with the lowest rate of teen pregnancy in the United States is New Hampshire. Unlike Texas, New Hampshire does require its school districts to teach sexual education. All students in New Hampshire receive sexual education and school districts have the discretion within certain bounds to choose what they teach.<sup>39</sup>

While many factors can contribute to the differences in teen pregnancy rates between Texas and New Hampshire, access to sexual education is at the crux of this issue. The AOUM programs which fund abstinence-only education in states throughout the country promote inaccurate and incomplete information regarding sexuality. States that rely on AOUM funding for the implementation of sexual education cannot teach anything outside the bounds set by the AOUM standards. This greatly limits the information available to students, which in turn, impacts their ability to avoid risky sexual behaviors. The flaw is not in teaching abstinence, but in purporting that it prevents any kind of sexual risks with 100% accuracy. The problem further exists in the way that abstinence-only is taught

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37 About Teen Pregnancy, Reproductive Health: Teen Pregnancy, (Nov. 15, 2021), <https://www.cdc.gov/teenpregnancy/about/index.htm>.

See also Gilda Sedgh, Lawrence B. Finer, Akinrinola Bankole, Michelle A. Eilers & Susheela Singh, Adolescent Pregnancy, Birth, and Abortion Rates Across Countries: Levels and Recent Trends, *J Adolesc Health*, (2015).

38 Texas State Profile, Siecus State Profiles, [https://siecus.org/state\\_profile/texas-fy21-state-profile/](https://siecus.org/state_profile/texas-fy21-state-profile/).

39 New Hampshire State Profile, Siecus State Profiles, [https://siecus.org/state\\_profile/new-hampshire-fy21-state-profile/](https://siecus.org/state_profile/new-hampshire-fy21-state-profile/)

through these AOUM programs which contain messages of shame and are deeply tied to religious thought. AOUM programs operate under the assumption that teaching other protective measures will encourage youth to engage in sexual activity, despite the statistics that prove otherwise.

There are currently no federal requirements for sex education to be taught in schools nor what sex education curriculum should include.<sup>40</sup> States have the authority to dictate requirements for sex education curriculum. Currently thirty states and the District of Columbia require schools to teach sex education.<sup>41</sup> Challenges to state requirements for sex education have resulted in courts upholding the constitutionality of these programs so long as they include an opt-out option for parents based on religious or moral grounds.<sup>42</sup> In *Smith v. Ricci*, the Supreme Court of New Jersey ruled on the constitutionality of state requirements to teach sex education to students.<sup>43</sup> The State Board of Education issued a regulation that required each school district to implement a family life education program in both elementary and high schools. This program includes topics on sexuality and an opt-out option for students. The plaintiffs argued that the implementation of these programs violated their right to free exercise of religion and the Establishment Clause contained in the First Amendment. The Supreme Court affirmed the action of the New Jersey State Board of Education, thus ruling that the requirement to implement a sexual education program with an opt-out option

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40 Sex Education Laws and State Attacks, PLANNED PARENTHOOD, <https://www.plannedparenthoodaction.org/issues/sex-education/sex-education-laws-and-state-attacks> (last visited Jan 24, 2022)

41 State Policies on Sex Education in Schools, Research, <https://www.ncsl.org/research/health/state-policies-on-sex-education-in-schools.aspx#:~:text=As%20of%20October%201%2C%202020,students%20receive%20instruction%20about%20HIV.>

42 *Smith v. Ricci*, 446 A.2d 501, 503 (N.J. 1982), *Citizens for Parental Rights v. San Mateo City Bd. of Educ.*, 82 A.L.R.3d 544, 547 (Cal. Ct. App. 1975), *Medeiros v. Kiyosaki*, 478 P.2d 314, 316 (Haw. 1970) (all decisions in which the Court affirmed comprehensive sex education so long as an opt-out option was provided for parents)

43 *Smith v. Ricci*, 446 A.2d 501, 503 (N.J. 1982)

does not violate the Establishment Clause nor does it violate individuals' right to the free exercise of religion. This case, along with similar ones in Hawaii and California, demonstrate the Supreme Court's agreement with regulations that require standards of sexual education.<sup>44</sup> Given the Court's support of requirements, along with the option for excusing students based on religious, moral, or other grounds, there seems to be no reason to not implement a federal requirement that all states must teach some form of sexual education. Giving states the discretion to decide what to include in the curriculum will limit federal overreach and safeguard state autonomy, while providing students with increased access to critical education for their sexual development.

A new federal funding program for sexual education should function similarly to the No Child Left Behind program, instated by President George W. Bush in 2001.<sup>45</sup> No Child Left Behind is an education program that is intended to "close the achievement gaps" in every grade so that each child has access to a high-quality education.<sup>46</sup> No Child Left Behind federally requires testing at each grade level, however, each state and school district is given the freedom to organize and tailor this program to their students. The sexual education requirements that we propose would work in a similar fashion, ensuring that these standards are reached while giving states the leeway to construct the best curricula for their communities.

### *C. Qualification Requirements for Educators*

One of the greatest issues with the sexual education system in the United States, is the discrepancy in the standards required for sexual educators. Each state, and further, each school district, has the

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44 *Supra* note 23.

45 *No Child Left Behind Act of 2001*, Washington Office of Superintendent of Public Instruction, <https://www.k12.wa.us/policy-funding/grants-grant-management/every-student-succeeds-act-essa-implementation/elementary-and-secondary-education-act-esea/no-child-left-behind-act-2001> (last visited Feb. 5, 2022)

46 *Id.*

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discretion to determine its sexual education curriculum and who teaches it. Candidates for teaching courses in any other subject in public and private schools not only need a teaching certification but also a relevant degree in the subject matter to be considered for the position. However, we have observed that in sexual education, these requirements are lacking. Some require an additional health or nursing degree. Commonly, health teachers, physical education teachers, school nurses, and third parties contracted with schools, complete the sexual education of most middle and high schools. Other schools require a short training session delivered through PowerPoint which outlines what they cannot teach, which encourages parents in the school district to volunteer to teach the class despite having no specialization or education in this field. The essential piece lacking is addressing this delicate, polarizing issue by someone who not only understands the science-based mechanics of sex but someone who understands human development and how these adolescents are maturing both mentally and physically. The current legal framework surrounding sexual education insufficiently addresses these issues. No part of the law dictates standards for sexual educators in middle or high schools despite having standards for all other educators working in the United States. Qualifications to teach any subject from kindergarten to 12th grade in the United States requires a bachelor's degree in teaching and passing a state test to obtain a teaching license.

In *Vergara v California*, parents and students argued for the constitutional right to education equality and instruction by competent teachers.<sup>47</sup> Minority students, upset with the poor quality of teaching they received in comparison to students in higher income areas, challenged California statutes regarding teacher tenure and pay. They argued that these statutes violated student's rights to equal education opportunities and had disproportionate effects on low income and minority students. The trial court ruled in favor of the plaintiffs, arguing that the challenged statutes were unconstitutional. The California Appeals Court reversed this decision, holding that the statutes were constitutional.<sup>48</sup> When the plaintiffs appealed this

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47 *Vergara v. California*, 246 Cal. App. 4th 619 (Cal. 2016).

48 *Id.*

decision to the California Supreme Court, the court refused to hear the case. While the Appeals Court ultimately reversed the decision of the lower court, this case represents an important movement among students and parents advocating for qualified educators. The right to quality educators is essential to a student's long-term success. The right to quality educators should extend to the subject of sexual education. The Supreme Court of California should have affirmed the lower court's decision to enshrine in the law the right to quality educators. This case sought to close the gap that exists due to socioeconomic disparities, by providing students with qualified educators. To close the wide gaps that exist in student's sexual education, they deserve to have quality educators. The standards currently fluctuate from state to state and in some cases are haphazardly put together. Some states allow parents to volunteer to teach sexual education, where the only preparation and training they receive is a PowerPoint presentation. We cannot expect our students to be prepared to face difficult sexual decisions without informed education. Such education comes only from trained experts in the field.

Studies have shown that community-based sexual education more effectively decrease sexual initiation and increase condom use among teenagers who have chosen to be sexually active.<sup>49</sup> The significant difference between school-taught programs and these community programs is in who was teaching the course. Community centers are more inclined to have qualified community members teaching the course. Although participants in community-based classes about sexual education may be predisposed to be sexually responsible, the difference in the environment created by these qualified professionals is significant. We argue that replicating this environment in a school setting would help to reach the aims of a complete sexual education. This is often left out of the conversation in sexual education because programs are over-focused on the subjects taught in these courses rather than how they are delivered.

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49 Molly Secor-Turner et al., *Implementing community-based comprehensive sexuality education with high-risk youth in a conservative environment: lessons learned*, 17 Taylor & Francis Group 544, 549-553 (2017).  
Joanna H. Stacey et al., *Comprehensive Sexuality Education*, 678 Committee Opinion ACOG 1 (2016).

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Teachers who have degrees in Human Development or Marriage and Family Sciences would be adept at properly teaching sexual education in whichever curriculum a school may choose. Professionals can do so without causing shame, by addressing questions appropriately and with current science-based evidence. Furthermore, access to qualified educators is even more attainable in rural areas, with the help of online options, such as video conferencing-styled classes which allow students to receive education by professionals regardless of their location. Students would benefit from learning sexual education from a teacher with these qualifications, regardless of which program they are taught, because of the age-appropriate environment that the teacher can create. Thus, legally codifying the requirement to standardize sexual educator qualifications will ensure American youth receive an accurate sexual education.

#### *D. Parental Involvement*

Increased parental involvement would cultivate a healthier environment for sexual education both inside and outside the classroom. Not only does this healthy environment lead to better learning outcomes but would also address common concerns raised by parents regarding sexual education. Requiring parental involvement in classwork or homework assignments, opens guided, meaningful communication channels for the child and parents. Ultimately, the parent becomes the main point of access for information beyond the classroom. Furthermore, this allows for parents to observe and participate in what lessons teachers present to their teenagers. Requiring parental participation as the new standard can assure concerned parents that teachers do not undermine their authority and rights as parents while also ensuring that teachers cover specific topics at the appropriate times.

States should reserve full discretion concerning what the realization of each of these aspects could look like, like the No Child Left Behind program as described above. Ideas for these options could be weekly parental or guardian observance of the class online or in-person, homework assignments requiring parental input, final projects including parental involvement, and take-home lessons with

parents, etc. The purpose of these assignments is to allow the parent to participate in teaching while monitoring the learning of their student and opening channels of communication for future conversations on this topic in the home.

## VI. CONCLUSION

No existing curriculum for sexual education is effective enough to address the social issues that plague our society, especially among our adolescent youth. Despite this apparent discrepancy, the political climate of our legislative system continues to focus mainly on pursuing an already existing curriculum, rather than looking for improvements that foster progression and promise solutions. Both sides are looking to realize the same goals: reducing unwanted teen pregnancies, curtailing abortions, lowering rates of STDs, and increasing an abstinence-only-until-marriage lifestyle. The current curriculum standards are proving to be powerless in changing these statistics. The proposed plans outlined in this paper address these exact issues. Creating a more conducive environment for accurate sexual education provides students with adequate sexual knowledge to effectively address the issues that they face at their stage of life, allows for learning and development, and ultimately leads them to a healthy and successful life.