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From: District Attorney Scott Harold Southworth

Date: March 24, 2010

Subject: 2009 Wisconsin Act 134 – Sex Education Mandates

Dear School Board Members and District Administrators:

I reviewed 2009 Wisconsin Act 134, which became law on March 11, 2010. This re-write of §118.019 of the Wisconsin Statutes imposes troubling new mandates on school districts, requiring that you transform your current human growth and development curricula into programming that promotes the sexualization – and sexual assault – of our children. Specifically, the new law does the following:

- **Promotes the sexual assault of children** – §118.019(2)6 requires schools to provide instruction on how to utilize contraception. However, it is a crime to engage in sexual intercourse with any child under the age of 18. If convicted or adjudicated delinquent for sexually assaulting a child under the age of 16, an individual must register as a sex offender and may be incarcerated. Sexual intercourse with a child aged 16 or 17 can result in a misdemeanor conviction / delinquency adjudication and incarceration, as well.

I handle many cases of sexual assault of our children each year, to include young adults engaging in sexual intercourse with teenage children. Forcing our schools to instruct children on how to utilize contraceptives encourages our children to engage in sexual behavior, whether as a victim or an offender. It is akin to teaching children about alcohol use, then instructing them on how to make mixed alcoholic drinks. While it is true that some children will wrongly choose to engage in sexual behavior before entering adulthood, our school districts should never promote illegal activity.

- **Exposes our teachers to possible criminal liability** – §948.40 of Wisconsin's Criminal Code deals with "Contributing to the Delinquency of a Child." Anyone who intentionally encourages or contributes to the delinquent (criminal) act of a child can be charged under this statute. For example, if a teacher instructs any student aged 16 or younger how to

utilize contraceptives under circumstances where the teacher knows the child is engaging in sexual activity with another child – or even where the “natural and probable consequences” of the teacher’s instruction is to cause that child to engage in sexual intercourse with a child – that teacher can be charged under this statute. The teacher need not be deliberately encourage the illegal behavior: he or she only need be aware that his or her instruction is “practically certain” to cause the child to engage in the illegal act. Moreover, the teacher could be charged with this crime even if the child does not actually engage in the criminal behavior. Depending on the nature of the child’s behavior, the teacher could face either misdemeanor or felony charges with maximum punishments ranging from 9 months of jail to up to six years of prison.

To be clear, the new legislative mandate does not just require fact-based instruction on what contraceptives can and cannot do (which would *not* result in criminal liability) – it requires instruction that includes how to properly use contraceptives, which turns objective instruction into implicit encouragement and advocacy. Depending on the specific facts of a case referred to my office upon a complaint by a parent, another teacher or a child, this encouragement and advocacy could lead to criminal charges. Our teachers should never be put in this position.

- **Undermines parental authority** – §118.019(2)1 requires school districts to encourage children to communicate about sexuality and sexual behaviors with “other family members” outside of the parent / child relationship. In essence, while a parent or guardian may be stressing abstinence with their child, the child must be instructed by our schools that it’s o.k. to seek advice on sexuality from another family member (including another child!). This can lead children to “shop around” for any family member who will provide the approval they want in order to justify illegal and dangerous sexual behavior.
- **Requires school districts to condone controversial sexual behavior** – §118.019(2)(a)3 requires districts to instruct children on “gender stereotypes” and §118.019(2)(b) requires instruction that does “not promote bias against pupils of any . . . sexual orientation . . . or against sexually active pupils.” Obviously, we want to ensure that every student is treated with dignity and respect, regardless of their lifestyle, sexual orientation or choices. However, in order to comply with these new mandates, our schools may need to provide instruction on homosexuality and heterosexuality alike. Moreover, “gender stereotype” instruction will likely need to include discussions about transgender and transsexual individuals. Likewise, the new mandates make it impossible for teachers to instruct our children that sexual promiscuity is even wrong. In effect, the new law injects an intense amount of unnecessary politics into our human growth and development classrooms, and places our teachers and children into a position of discussing extremely controversial issues that will likely conflict with the religious beliefs and values of most Juneau County families.
- **Provides access to our children by the contraceptive industry** – §146.890(3r)(e) was modified in Act 134 to give “volunteer health care providers” access to our children in order to teach sexual education. Under previous law, only our trained teachers could provide this sensitive instruction. Now, schools can utilize these “health care providers,” who may come in the form of contraceptive industry representatives (e.g. employees of Planned Parenthood, the nation’s largest abortion and contraceptive provider, which

lobbied in favor of this new law) and who can effectively market sexually-oriented products to our children. Our children receive enough sales pitches from television, magazines and radios – they should not be subjected to pandering by “volunteers” from local contraception businesses whose real interest is likely obtaining new, young customers.

- **May expose your district to civil litigation** – As a criminal prosecutor, I cannot give you legal advice concerning any civil liability that may attach to your district if instruction under the new sex education mandates lead to sexual assault, unplanned pregnancies, sexually transmitted diseases, emotional trauma, etc. Moreover, I cannot give you legal advice as to whether or not you are in compliance with the new law, should you choose to adopt the new mandates. However, know that the ACLU of Wisconsin has previously made it clear that it wants to monitor sex education programming in Wisconsin Schools (see its June/July 2007 newsletter). Thus, I strongly suggest that you consult with your legal counsel regarding these issues.

Both of our representatives (State Senator Dale Schultz and State Representative Ed Brooks) voted against these new mandates, which passed narrowly in both houses of the Wisconsin Legislature. Sadly, the new mandates not only remove parents and school boards from the decision-making process on what’s best for our children as it pertains to sex education, but they also forbid school districts from teaching *any* human growth and development instruction if they refuse to engage in politically-charged instruction. In effect, it punishes districts for maintaining high moral standards and a desire to protect our children from the dangers they face if they engage in sexual activity in their most innocent years. The only option for districts is to “opt out” completely from teaching human growth and development.

I am forced to deal with the numerous sexual assaults that occur in Juneau County each year. I witness first-hand the pain and suffering child victims must endure. As you well know, I am doing everything I can to put offenders behind bars and protect our children. However, these new mandates will make my job much more difficult by converting objective human growth and development programming into a radical program that sexualizes our children as early as kindergarten. This, in turn, will lead to more child sexual assaults.

I know that you share my goal to protect our children, represent the values of the parents in your district, and support your district’s teachers. To that end, I urge you to temporarily withdraw from human growth and development instruction, effective with the 2010-2011 school year, until the Wisconsin Legislature amends or repeals these new mandates. I expect the issue to be taken up as early as next January when the 2011 Legislature convenes. In the interim, I recommend that you consider transferring any instruction on human physiology / human anatomy to your science curricula. However, to adopt the highly-controversial mandates of Act 134 risks the safety of our children and the careers of our teachers – something I implore you not to do.

Sincerely,



Scott Harold Southworth
District Attorney