

SCHOOLS:

There is no Missouri statute or regulation of the State Board of Education requiring students to take "mass showers" or requiring teachers to include sex education in the curriculum of kindergarten through sixth grade.

September 25, 1969

OPINION NO. 416

Honorable Edward "Doc" Groves  
Representative  
One Hundred, Forty-Fourth District  
2340 East Avenue  
Springfield, Missouri 65803



Dear Representative Groves:

This letter is in response to your request for an opinion on the following questions:

1. You understand that it is being made compulsory for students to take mass showers in physical education classes or they will be failed in public hygiene. You "would like to know if this is a compulsory law or an educational ruling."

2. You understand that sex education is being given in kindergarten through sixth grade and you request our opinion as to whether "This is a little early for young persons to be receiving this kind of education and again should not be mandatory."

In addition to reviewing the Missouri statutes, we have reviewed certain publications of the State Department of Education including The School Administrators Handbook (1969), A Guide for Health Education - Grades 9-12 (1961), A Guide for Physical Education in the Elementary School (1963), and A Guide for Physical Education - Grades 7-12 (1960).

The powers and duties of the State Board of Education are set forth in Section 161.092, RSMo 1967 Supp. In subparagraph (2) of that section, the State Board is instructed to "carry out the educational policies of the state relating to public schools that are provided by law and supervise instruction in the public schools."

Section 161.102, RSMo 1967 Supp. and Section 170.021, RSMo 1967 Supp. are the only statutes directly pertaining to physical or health education. Section 161.102 states as follows:

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"The state board of education shall

"(1) Adopt and promulgate rules and regulations deemed necessary to secure courses in physical education to all pupils and students in all public schools and in all educational institutions supported in whole or in part by the state;

"(2) With the advice and cooperation of the director of the state division of health, compile and print a manual of physical education and health supervision and school nurse service to be distributed for use by the teachers, supervisors of physical education, school health supervisors and school nurses of the state."

Section 170.021, RSMo 1967 Supp., providing for instruction in physiology and hygiene, reads as follows:

"Physiology and hygiene, including their several branches, with special instruction as to tuberculosis, its nature, causes and prevention, and the effect of alcoholic drinks, narcotics and stimulants on the human system, shall constitute a part of the course of instruction, and shall be taught in all public schools."

Pursuant to these statutes the State Board of Education has prepared and distributed to the schools certain guides for physical education and health education. Neither the statutes nor the guides published by the State Board of Education require that students take mass showers as a prerequisite to passing a physical education or public hygiene course.

The Board's only physical education requirement is that one unit of credit shall be earned by all high school pupils. See The School Administrators Handbook (1969), pp. 105-106. In A Guide For Physical Education - Grades 7-12 (1960), published by the State Board of Education, the following is all that appears under the heading "What are the State Regulations Concerning Secondary Physical Education?"

"A minimum time allotment of two class periods per week throughout each year of high school should be spent in physical education activities. This minimum should be required of all students for high school

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graduation. In addition, each school should make available to all high school students a minimum of one semester (a one-half unit course) of health instruction and activities including health examinations, health habits and the like. As an alternative many schools are offering a combination of health and physical education, three to five class periods per week for all students. This is a desirable and recommended practice which covers the entire four-year secondary period and which eliminates the necessity of formal classroom instruction in health and hygiene.

"Schools of all classifications, AAA, AA, A, and App, are required to offer one and one-half units of physical education and health (one unit of physical education, and one-half unit of health).

"All teachers of physical education at the secondary level shall possess a baccalaureate degree with a minimum of 24 hours in the field of health and physical education. Eight hours of the 24 should include specific courses in physiology and hygiene." (Id. at 21)

A Guide for Physical Education - Grades 7-12 (1960) mentions showers in two places. In connection with the State Board's recommendation as to the best type of physical facilities for a physical education program, the following appears under the heading "Shower Room":

"The shower room should be located adjacent to the locker room and wall and floor construction should be the same as that of the locker room. The ceiling should be of vapor-proof construction and be recessed. One shower head should be provided for every three pupils with 14 square feet allowed for each shower head. Shower heads should be installed at least 4 feet apart. All showers should be controlled by a water and temperature control.

"At least two dressing booths with partitioned shower should be installed in the

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girls' locker room.

"A toweling room adjacent to the shower room is desirable." (Id. at 38)

In a section which discusses school swimming pools and their construction, the following paragraph appears under the heading "Locker and Shower Rooms":

"Locker and shower rooms should be provided for school and community groups. It is important that these service units be placed adjacent to the pool room. Shower stalls and dressing booths should be provided in the girls' locker room instead of gang showers and dressing facilities because of the anticipated community use of the pool." (Id. at 43)

Similarly, there is no Missouri statute or regulation of the State Board of Education requiring sex education from kindergarten through sixth grade or for any elementary grade. In a publication of the State Board of Education entitled A Guide for Health Education - Grades 9-12 (1961), the health education requirements of the State Board of Education are stated as follows:

"Each high school in the state is required to offer a semester course in health education. This course may be offered on the basis of five classroom periods per week for one semester wherein the pupil receives one-half unit of credit. As an alternate, the course may be offered in combination with physical education on the basis of a minimum of one classroom period per week for four years wherein the pupil receives one-eighth unit of credit per year -- a total of one-half unit for the four years. It should be noted that all students are not required to take this course, but it is an offering requirement for classification of all classes of schools.

"It is understood that the instructor of this course will be a certified teacher in health education, particularly in larger school systems. In the smaller schools, a teacher in a related field with some training in health education may qualify.

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Such a person should have background training in the biological sciences, physiology, preventive medicine, personal and public health, and problems of school health. In either case, the teachers should have a working knowledge of the school health problems, communicable and noncommunicable diseases, systems of the body, dental hygiene, alcohol-narcotic education, nutrition, safety and accident prevention, mental health problems, sex education, sanitation, and related health agencies and organizations on state and local levels." (Id. at 4)

A "Family Living" course is suggested for grade eleven. A brief description of the content of this course is found in A Guide For Health Education - Grades 9-12 (1961):

"This unit is concerned with helping the student be a successful member of his family group now and to help prepare him to accept and fulfill his responsibilities in the future as a parent and adult. This includes learning how to develop good relationships with his own sex, with the opposite sex, and with all ages and groups. It is the function of the school to provide the child with definite opportunities, as a part of the regular school program, to acquire scientific knowledge about growing up under wholesome conditions. School programs should be planned in cooperation with parents, parent groups, and other community organizations, such as health, welfare, church and family life coordinating agencies." (Id. at 15)

Also, there is a recommended course entitled "Systems of the Body." One section of the suggested outline of the content of this course is entitled "What comprises the genito-urinary system?".

We have summarized above all of the statutory requirements, requirements of the State Board of Education, and suggestions of the State Board of Education having to do with either the mass shower or sex education question. As is indicated by the powers and duties of the State Board as set forth in Section 161.092, RSMo 1967 Supp., the State Board performs primarily an advisory function in connection with the curriculum of local school districts. The governing bodies of the school districts in the

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State of Missouri are primarily responsible for the curriculum in their districts. According to The School Administrators Handbook, (1969):

" . . . over 150 Missouri school districts have organized curriculum committees for the purpose of studying 'new' curricular developments in view of implementing the most applicable to their particular need. The state department of education continues to work with statewide curriculum committees in the study and development of course guides as one means of improving instruction at the state level. . . .

"It becomes the responsibility of the school administrators to introduce major curricular change and to provide supportive leadership in its development and implementation. In final analysis, the superintendent of schools is the one person who can marshal the necessary authority by board action to precipitate the decisions necessary for the adoption of curricular development and change." (Id. at 151)

Section 171.011, RSMo 1967 Supp. places on the school board of each school district the responsibility for making the rules and regulations necessary for the operation of that district.

"The school board of each school district in the state may make all needful rules and regulations for the organization, grading and government in the school district. The rules shall take effect when a copy of the rules, duly signed by order of the board, is deposited with the district clerk. The district clerk shall transmit forthwith a copy of the rules to the teachers employed in the schools. The rules may be amended or repealed in like manner."

#### CONCLUSION

In view of the foregoing it is the conclusion of this office that there is no Missouri statute or regulation of the State

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Board of Education requiring students to take "mass showers" or requiring teachers to include sex education in the curriculum of kindergarten through sixth grade.

Very truly yours,

A handwritten signature in cursive script, appearing to read "John C. Danforth". The signature is written in dark ink and is positioned above the typed name.

JOHN C. DANFORTH  
Attorney General