

## **GENDER EQUITY THROUGH COMPREHENSIVE SEX EDUCATION**

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While the federal government has largely declined to involve itself in the curriculum design of public education, it has carved an exception for sex education. It requires that any sex education offered in federally funded schools focus on abstinence, either in an abstinence-only program, or in an abstinence-plus model that includes information about STIs and contraceptives in addition to abstinence. Abstinence-only education, however, is ineffective in accomplishing its goals of curbing teen engagement in premarital sex, reducing teen pregnancy, and limiting the spread of STIs. Abstinence-only education is much less effective than other more sex- and value-neutral education models, such as those adopted in Sweden in the 1970s. This failure of our sex education system to provide appropriate information results in adolescents obtaining information about sex and sexuality from mainstream media and pornography, which perpetuates gender inequality and the social norm of sexual violence. To ensure substantive sex education that accomplishes its goals and prevents the perpetuation of gender-based violence and inequity, the federal government should adopt mandatory minimum standards for sex education in public institutions that are sex- and value-neutral.

The topic of sex education has long been a pitched battle in the United States, with religious and conservative constituencies arguing for abstinence-until-marriage-only education as the most effective means of preventing teen and unmarried pregnancies and the transfer of STIs. Secular and liberal constituencies, on the other hand, have advocated for “comprehensive” sex education, which includes coverage of condom and other contraceptive use and its potential to prevent pregnancy and the spread of STIs. The US Department of Health and Human Services’ Office of the Assistant Secretary for Planning and Evaluation published a longitudinal study of the efficacy of abstinence only education, and found that abstinence-only education programs had no statistically significant impact on: rates of abstinence or the students’ expectation to abstain; the likelihood that students would engage in unprotected sex; or, the rate of pregnancy, birth, and

STIs among students.<sup>1</sup> A study of both abstinence-only and comprehensive sex education programs found that while abstinence-only sex education had no significant impact, comprehensive sex education programs had a marginal impact on whether students ever engaged in vaginal intercourse and showed significantly lower rates of unintended pregnancy.<sup>2</sup> Neither form of education showed any impact on reported contraction of STIs.<sup>3</sup> Even the relatively “comprehensive” sex education curriculums in the US are still required to advance abstinence only until marriage if the school receives any federal funding,<sup>4</sup> despite evidence that more sex-neutral or harm reduction models, like those adopted in Sweden, are more effective.

Unlike the two models utilized in the US, the Swedish education system embraces a more sex- and value-neutral curriculum model. While the US has limited access to abortion and ensured that all sex education in the public schools focuses on abstinence, Sweden adopted an entirely different approach. Sweden liberalized its abortion laws in 1975, providing free abortions to any woman up to 18 weeks into her pregnancy and allowing prohibition of abortion only if the procedure posed a risk to the woman’s life or health.<sup>5</sup> This shift was coupled with a standardization of the sex education programs in Sweden, which focused on open discussion of sex, sex roles, and sexuality without emphasizing one perspective or providing any value

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<sup>1</sup>Office of the Assistant Secretary for Planning and Evaluation, *Impacts of Four Title V, Section 510 Abstinence Education Programs* (April 13, 2007).

[https://aspe.hhs.gov/basic-report/impacts-four-title-v-section-510-abstinence-education-programs#Chapter III. Impacts on Sexual Abstinence and Teen Risk Behaviors.](https://aspe.hhs.gov/basic-report/impacts-four-title-v-section-510-abstinence-education-programs#Chapter%20III.%20Impacts%20on%20Sexual%20Abstinence%20and%20Teen%20Risk%20Behaviors)

<sup>2</sup> Pamela Kohler, Lisa Manhart, & William Lafferty, *Abstinence-only and Comprehensive Sex Education and the Initiation of Sexual Activity and Teen Pregnancy*. 43 J. Adolescent Health, 344 (2008).

<sup>3</sup> *Id.*

<sup>4</sup> “No funds authorized under this Act may be used... (3) to develop or distribute materials, or operate programs or courses of instruction directed at youth, that are designed to promote or encourage sexual activity, whether homosexual or heterosexual; (4) to distribute or to aid in the distribution by any organization of legally obscene materials to minors on school grounds; (5) to provide sex education or HIV-prevention education in schools unless that instruction is age appropriate and includes the health benefits of abstinence; or (6) to operate a program of contraceptive distribution in schools.” 20 USC § 7906.

<sup>5</sup> Prudence Brown, *The Swedish Approach to Sex Education and Adolescent Pregnancy: Some Impressions*. 15 No. 2 Fam. Plan. Persp., 90 (1983).

judgments.<sup>6</sup> These programs include Christian and non-Christian views of sexuality, homosexuality, pornography, prostitution, masturbation, and a variety of other topics related to sex, sexuality, and human interactions related to sex and sexuality.<sup>7</sup> In the years following the adoption of the more liberal abortion policy and the expanded sex education programs, the rates of teen pregnancies, births, and abortions in Sweden dropped; whereas the rates of pregnancy and abortions in the US for that same period increased.<sup>8</sup> A more recent study confirmed that open discussion framed in a harm-reduction model related to condom use and emergency contraceptives, providing access to condoms and contraceptive counseling showed a modest impact on student attitudes and knowledge of both methods, and increased condom usage overall.<sup>9</sup>

In the absence of truly comprehensive sex education, American teens are obtaining information about sex and sexuality from media, both mainstream television and film, as well as pornography. This reliance of adolescents on media for their information regarding sex is reflected in the correlation between exposure to sexual content on television and rates of teen pregnancy, with high exposure resulting in twice the likelihood of becoming pregnant than teens with limited exposure.<sup>10</sup> Use of pornography is also prevalent among adolescents, particularly adolescent boys.<sup>11</sup> This prevalence is particularly alarming given the correlation between viewing pornography and sexual violence.<sup>12</sup> In addition to the impact that sexual imagery in mainstream media and pornography can have on pregnancy rates and instances of

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<sup>6</sup> *Id.* at 91.

<sup>7</sup> Carl Gustaf Boethius, *Sex Education in Swedish Schools: The Facts and the Fiction*, 17 No. 6 *Fam. Plan. Persp.*, 276, 277-78 (1985).

<sup>8</sup> See Brown, *supra* note 5 at 93.

<sup>9</sup> Margareta Larsson, Karin Eurenus, Ragnar Westerling, & Tanja Tyden, *Evaluation of a Sexual Education Intervention Among Swedish High School Students*, *Scandinavian J. Pub. Health*, 34, 124 (2006).

<sup>10</sup> Anita Chandra, Steven C. Martino, Rebecca L. Collins, Marc N. Elliott, Sandra H. Berry, David E. Kanouse, & Angela Miu, *Does Watching Sex on Television Predict Teen Pregnancy?* 122 No. 5 *Pediatrics*, 1047 (2008).

<sup>11</sup> Mariek Vanden Abeele, Scott W. Campbell, Steven Eggermont, Keith Roe, *Mobile Porn Use, and Peer Group Dynamics: Boys' and Girls' Self-Perceived Popularity, Need for Popularity, and Perceived Peer Pressure*, *Media Psychol.* 6, 13. <http://dx.doi.org/10.1080/15213269.2013.801725> (2014).

<sup>12</sup> Silvia Bonino, Silvia Ciairano, Emanuela Rabaglietti, & Elena Cattelino, *Use of Pornography and Self-Reported Violence Among Adolescents*, 3 *Eur. J. Dev. Psychol.*, 265, 281 (2006).

sexual violence, these sources of sexual information can also have a damaging effect on perceived gender roles and gender inequity more generally. Various feminist legal theories have addressed these concerns.

As with many social and political issues, feminist thought on the subject of media and pornography varies wildly. One influential school of thought was raised by radical feminists, Catharine MacKinnon in particular, who analyzed the way that power serves to define how things are while simultaneously obscuring the harms that status quo inflicts.<sup>13</sup> Within this framework, she postulated that pornography “constructs what a woman is in terms of its view of what men want sexually.”<sup>14</sup> Beyond normalizing sexual violence against women through its content, pornography serves to institutionalize male dominance by “eroticizing hierarchy” and “sexualiz[ing] inequality.”<sup>15</sup> To combat these constructions and to ensure the visibility of the harms that pornography obscures, MacKinnon advocated to redefine pornography as a civil rights violation rather than as an expression of free speech, explicitly defining pornography as a form of sex discrimination.<sup>16</sup> While the regulations proposed by MacKinnon did not function specifically as a ban, the redefinition of pornography as a form of harm in and of itself would functionally limit public consumption of it.<sup>17</sup>

While the radical feminist viewpoint on the subject of pornography has been inarguably influential -- to the point that critiques of the position fail to counter that censorship is supported by feminist values generally<sup>18</sup> -- many groups and theories of feminism have opposed the censorship regime proposed by MacKinnon.<sup>19</sup> Pro-sex, or sex positive, schools of feminist thought resist both censorship and the underlying view that sex is inherently damaging to women, principally because such views further the patriarchal controls of

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<sup>13</sup> Catharine MacKinnon, *Pornography, Civil Rights, and Speech*, 20 Harv. C.R.-C.L. L. Rev. 1, 7-8. (1985).

<sup>14</sup> *Id.* at 17.

<sup>15</sup> *Id.* at 18.

<sup>16</sup> *Id.* at 2, 22.

<sup>17</sup> *Id.* at 25.

<sup>18</sup> Nadine Strossen, *A Feminist Critique of “The” Feminist Critique of Pornography*, 79 Va. L. Rev. 1099, 1108 (1993).

<sup>19</sup> E.g. Feminist Anti-Censorship Taskforce, Feminists for Free Expression, National Organization for Women, and the Working Group on Women, Censorship, and “Pornography”, *Id.* at 1109-11.

female sexuality.<sup>20</sup> The anti-sex/pro-censorship perspective, from a more sex positive point of view, perpetuates the idea of women as being intrinsically victims, which endangers the larger struggle for gender equality.<sup>21</sup> Perhaps most damningly, however, the sex-positive critique of the radical feminist goal of censorship points out that censorship -- along with the religious right-wing historical effort to prohibit women from accessing information about their sexuality -- stifles women's efforts to discuss and construct their gender and sexuality.<sup>22</sup>

Sex positive feminists have therefore approached the subject of pornography and its potential harms by altering the content of pornography through participation, and, in some cases, utilizing the medium to change the construction of sexuality directly. Women-centered businesses arose, focusing on products and information designed to enhance open discussion about sex among women.<sup>23</sup> Self-described feminist pornographer Tristan Taormino founded Smart Ass Productions, which, in addition to focusing on "female desires, fantasies, pleasures, and orgasms" in her films, also created Vivid-Ed, a line of explicit sex education films.<sup>24</sup> In direct contradiction to MacKinnon's view that sexual dominance institutionalizes male supremacy, Taormino also created a series called Rough Sex, where female performers act out their fantasies of dominance and submission, exploring and constructing sexuality in their own terms: "part documentary and part erotic vignette, Rough Sex dares to challenge conventional wisdom about the fantasy lives of women."<sup>25</sup>

While this debate amongst feminist factions continue, however, the current harms, the rates of teen pregnancy and prevalence and

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<sup>20</sup> *Id.* at 1147.

<sup>21</sup> *Id.* at 1151-52.

<sup>22</sup> *Id.* at 1163.

<sup>23</sup> E.g. Good for Her, a Toronto female-focused porn and sex toy store, who founded the Feminist Porn Awards in 2005, which increased large media producers to engage in feminist-centered sexual representation in pornography. Also, local Seattle sex shop Babeland, whose mission statement is "to promote and celebrate sexual vitality by providing an honest, open and fun environment; encouraging personal empowerment, community education, and support for a more passionate world are key." *Good for Her: About Us*, <http://www.goodforher.com/about-us/>; *Good for Her Presents the Feminist Porn Awards*, <http://www.feministpornawards.com/>; *The History of Toys in Babeland*, <http://www.babeland.com/about/presskit/history>.

<sup>24</sup> *Tristan's Films*, Pucker Up, <http://puckerup.com/feminist-porn/tristans-films/>.

<sup>25</sup> *Id.*

normalization of sexual violence are inescapable. Whether the future of pornography (and, to some extent, sexual content in mainstream media) ends in censorship or a continued influx of feminist ideals that change the content of pornography to promote equity between sexual partners across gender lines, alteration of the current regime of sex education in the United States is in order. With the inescapable fact that abstinence-only education fails to accomplish its goals (whichever goal is paramount -- preventing teen pregnancy, preventing adolescents from contracting STIs, or preventing adolescents from having sex altogether, or a combination of the three), abstinence-only education is ineffective. Abstinence-plus education is only slightly more effective -- at least in terms of preventing teen pregnancy. Both types of education, however, leave adolescents with gaps in their knowledge. Common sex-ed questions from ninth grade students included those related to body image,<sup>26</sup> first sexual experiences, masturbation, orgasm, pregnancy, and STIs.<sup>27</sup> This example of the gap in student knowledge suggests the necessity of immediate change to our existing sex education curriculum.

While the federal government has largely declined to substantively interfere with curriculum in public education,<sup>28</sup> leaving the design and implementation of curriculum to state governments and local agencies, it created an exception for sex education in the adoption of the prohibition on any sex education program that does not promote abstinence.<sup>29</sup> Given this predetermination that, unlike curriculum generally, the federal government has a role in determining the scope of sex education curriculum, the federal government should mandate and develop a standard sex education program. In order to address the gaps in necessary knowledge that exist under the current regime, the curriculum should be robust and cover topics related to

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<sup>26</sup> A common question reported by students on a reddit thread was “What is average penis size?” Another common question was regarding pubic hair, which could potentially be influenced by consumption of pornography, where pubic grooming is an industry norm. Alex Rees, *16 Types of Questions 9th Graders Have for the Sex Ed Teachers*, (May 18, 2015) <http://www.cosmopolitan.com/sex-love/news/a40636/ninth-grade-sex-ed-questions-reddit/>.

<sup>27</sup> Iheartdna, *This is a sampling from three years of 9th-graders' anonymous sex ed questions to me*, [https://www.reddit.com/r/mildlyinteresting/comments/363c7h/this\\_is\\_a\\_sampling\\_from\\_three\\_years\\_of\\_9thgraders/](https://www.reddit.com/r/mildlyinteresting/comments/363c7h/this_is_a_sampling_from_three_years_of_9thgraders/).

<sup>28</sup> 20 USC § 1232a, 34 CFR § 106.42.

<sup>29</sup> 20 USC § 7906.

body norms, puberty, sexual desire, communication including substantive discussion of the meaning and necessity of consent, and various moral frameworks related to sexuality. This includes both the emphasis on abstinence before marriage of certain religions as well as sex positive approaches. By including both the abstinence-focused viewpoint of certain faiths as well as sex-positivity and alternate sexualities, an inclusive curriculum would ensure the appropriate neutrality necessary to divide the purely religious end of abstinence and national legislation.<sup>30</sup> While such a balancing of perspectives would presumably still raise controversy, as the Supreme Court of New Jersey noted, “As long as the state does not unfairly represent any moral views that might undercut the teaching of a child's religion, sex is as appropriate a classroom subject as lyric passages from the Bible.”<sup>31</sup>

The National Sexuality Education Standards (NSES), developed by a group of individuals from a variety of fields including health and sexuality education, public health and policy and advocacy, identified several topics that should be included at a minimum in substantive sex education: anatomy and physiology; puberty and adolescent development; identity; pregnancy and reproduction; sexually transmitted diseases and HIV; healthy relationships; and personal safety.<sup>32</sup> The NSES craft age-appropriate standards and goals for education. For example, by the end of 8th grade, students would “be able to describe the physical, social, cognitive, and emotional changes of adolescence,” as well as “analyze how friends, family, media, society, and culture can influence self-concept and body image.”<sup>33</sup> Other goals by this age range include being able to identify accurate information sources regarding puberty and sexuality; understand and accept different gender identities and sexual

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<sup>30</sup> The US Supreme Court interpreted the First Amendment to require neutrality of the states to religious groups and views: “[T]he history which our prior decisions have summoned to aid interpretation of the Establishment Clause permits little doubt that its prohibition was designed comprehensively to prevent those official involvements of religion which would tend to foster or discourage religious worship or belief.” *Sch. Dist. of Abington Twp. v. Schempp*, 374 U.S. 203, 234 (1963).

<sup>31</sup> *Smith v. Ricci*, 89 N.J. 514, 524 (1982), quoting *Comment: Sex Education: The Constitutional Limits of State Compulsion*. 43 S. Cal. L. Rev. 548 (1970)

<sup>32</sup> Future of Sex Education (FoSE), *National Sexuality Education Standards: Core Content and Skills*, K-12. <http://www.futureofsexed.org/documents/josh-fose-standards-web.pdf>.

<sup>33</sup> *Id.* at 33.

orientations; develop strategies for interacting with social media; develop communication skills necessary to show and respect boundaries; and understand the impacts of sexual violence, how to report it, and why victims are not at fault.<sup>34</sup> These minimum standards, if adopted at a federal level, would substantially address the gaps left by our current sex education system and ensure that adolescents are not obtaining gap filler education from media and pornographic sources.

Abstinence-focused education, as required by federal law, not only fails to accomplish its goals of curbing sexual activities among teens and preventing teen pregnancy and the spread of STIs, but also ensures that adolescents will obtain their information about sex from media and pornography, which perpetuates gender inequality and sexual violence norms. In order to move towards gender equality and combat the pervasiveness of rape culture, in addition to preventing teen pregnancy and the rate of STIs, the federal government should adopt an inclusive sex- and value-neutral comprehensive minimum standard applicable to any K-12 public institutions based on the Swedish model of sex education and the National Sexual Education Standards published by the Future of Sex Education.

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<sup>34</sup> *Id.* at 17-18.