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Alameda County Superior Court judge Frank Roesch issued a temporary ruling Nov. 25 saying that the Alameda Unified School District's anti-bullying lessons do not fall under the category of health education. The ruling is a victory for AUSD and a defeat for the parents who sued the district hoping to keep their children out of the lessons.

The motion to allow the petitioners to have their children excused from a portion of "health instruction" entitled Safe School Curriculum Lesson 9 for the 2009-2010 school year, as well as subsequent school years as per Education Code Section 51240 is denied, Judge Roesch said.

AUSD's board of education adopted the teaching of the Lesson 9 curriculum, which teaches children to respect others regardless of their sexual orientation, on May 26 by a 3 to 2 vote. An organization calling itself SERVE Alameda sprung up and began to circulate petitions to recall the three board members who voted for the measure: Tracy Jensen, Ron Mooney and Niel Tam.

Other parents who opposed the Lesson 9 curriculum took AUSD to court. These parents claimed that they had the right to opt their children out of the new curriculum based on their religious beliefs. Education Code Section 51240 allows a parent or guardian to have a student excused from instruction, "If any part of a school's instruction in health conflicts with the religious training and beliefs of a parent or guardian of a pupil." Parents bringing the lawsuit used section 51240 in their law suit saying that Safe School Curriculum Lesson 9 conflicted with their beliefs. If the tentative ruling stands, parents will not be allowed to keep their children from attending Lesson 9.

Judge Roesch said in his tentative decision that an opt-out provision might conflict with the state education code. This code requires school districts to provide equal opportunities to students in the six categories protected under California law: disability, gender, nationality, race or ethnicity, sexual orientation and religion.

In his opinion Judge Roesch concluded that the opt-out provision in section 51240 "is not reasonably construed to include instruction in family life education, but was intended to be more limited in scope."

In his decision Judge Roesch went through the Lesson 9 curriculum at each grade level from kindergarten to fifth grade. He distanced the Lesson 9 curriculum from the "instruction in health" that Section 51240 requires, citing what he called "Health Ed Content Standards." "With regard to the kindergarten portion of Lesson 9 curriculum, petitioners do not show or even argue that any portion of the curriculum is within the Health Ed Content," he wrote.

He said that he found Lesson 9 for first grade to be "clearly distinct from the Health Ed Content Standards." He said, rather, that the lessons focused on "understanding and identifying the differences between families, rather than the various roles, responsibilities and needs of individual members."

He pointed out that "the purpose and content of the Lesson 9 curriculum for second grade concerns identification, understanding and tolerance of alternative family structures. He said that, like Lesson 9's first-grade lessons, he found this purpose of the second-grade lessons "distinct from the purpose of Health Ed Content Standards."

The school board is slated to review new lessons and consider a plan to put reading list in place that more explicitly addresses bullying on specific bases at its next meeting on Tuesday, Dec. 8.

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