



**What You
Need to
Know about
Florida's
law on classroom
instruction on sexual
orientation and gender
identity, book bans,
and other
curriculum restrictions**

Updated as of April 25, 2024

In the spring of 2022, Florida Governor Ron DeSantis signed into law HB 1557, also referred to as the “Don’t Say Gay” bill, which prohibits “classroom instruction by school personnel or third parties on sexual orientation or gender identity.” The law took effect July 1, 2022. A federal lawsuit challenging this law was settled on March 11, 2024, resulting in important clarifications and narrowing the law, as described below.

HB 1069, which was passed and signed into law in May of 2023, expanded the classroom instruction provisions of the 2022 law and added sweeping new provisions prohibiting the use of pronouns consistent with any non-cisgender identity, expanding book banning procedures, and censoring health curriculum and instruction. The [second law](#) took effect on July 1, 2023. At least one federal lawsuit is pending challenging the HB 1069 pronoun restrictions, and a district court recently ruled that the pronoun ban violated the First Amendment rights of a transgender teacher.

This overview is intended to provide guidance for members and allies about the narrowed scope of HB 1557’s restrictions on classroom instruction and the additional provisions of HB 1069. The efforts of educators, allies, students and families to challenge these laws have led to and will continue to provide important safeguards against censorship and marginalization of LGBTQ+ students, families, and educators. Know that FEA is here to support educators and will continue to update members with guidance on how to navigate these difficult issues. The FEA Legal Department will defend all FEA members in employment-related actions.

Classroom Instruction

The 2022 law (HB 1557) prohibited any classroom instruction on sexual orientation and gender identity in grades kindergarten through three and permitted such instruction in subsequent grades only if age and developmentally appropriate. The 2023 law (HB 1069) expanded the absolute bar on classroom instruction on sexual orientation or gender identity to prekindergarten through eighth grade except where instruction is required for health lessons on sexual abstinence or HIV in grades six through eight. Fla Stat. § 1001.42(8)(c)(3). In ninth grade and above, the requirement carries over from the 2022 law that such instruction must be age and developmentally appropriate. *Id.* The 2023 law also extended these prohibitions to charter schools.

In March 2022, more than a dozen Florida parents, students, and teachers, as well as non-profit organizations Equality Florida and Family Equality, filed a lawsuit challenging HB 1557, the original classroom instruction restrictions law. After two years of litigation, *Equality Florida v. Florida State*

Board of Education (“the Equality Florida case”), the plaintiffs reached a [settlement agreement](#) with the State that provides important clarifications about what the law does and does not prohibit, and makes clear that the law must be applied neutrally and cannot be used to discriminate against or erase LGBTQ+ families.

Under the settlement, the considered position of the Florida Department of Education and the Florida Board of Education, including all of its Board members, is that the law is to be interpreted and enforced only as described below. The State of Florida has distributed the settlement, with this understanding of the scope of the law, to all school districts with the request that it be shared with all school district principals.

If a school district takes a different view of the law from the interpretations described below, local FEA affiliates should share a [copy of the settlement agreement](#) with the district and urge the district not to depart from the considered view of the State as to the reach of the law. The local affiliate should inform FEA if the district refuses to interpret the law in line with the State’s direction.

Specifically, schools will be advised that Florida views the 2022 law (HB 1557) to be limited in the following respects.

- ❖ **Classroom references:** The law does **not** prohibit references to LGBTQ+ persons, couples, families or issues in literature, classroom discussions (whether student-to-student discussions or teachers responding to student questions), or in students’ academic work product. Teachers are **not** prohibited from identifying same-sex or transgender partners or spouses.
- ❖ **Classroom instruction:** In grades pre-K through eight, the law **prohibits** only “classroom instruction” on sexual orientation and gender identity. “Classroom instruction” means “the formal work of teaching that occurs in the classroom setting.” References to LGBTQ+ persons, relationships, themes or issues outside of such classroom instruction – including in students’ work product, discussions, inclusions in literature, and any other context in which the teacher is not “instructing” on the subject of sexual orientation or gender identity – is **not** prohibited. Similarly, library books are not classroom instruction and are not covered by the law unless used in class by a teacher for instruction purposes.
- ❖ **Non-discrimination:** The settlement makes clear that the law does not target LGBTQ+ persons, couples, families, or issues, but rather, that it requires neutrality on issues of sexual orientation and gender identity. The “classroom instruction” ban prohibits equally instruction on heterosexuality, homosexuality, bisexuality, cisgender

identities, and transgender identities. This means, for example, that it would violate the law to instruct that heterosexuality is superior to other sexualities, or that cisgender identities are superior to transgender identities.

- ❖ **Anti-bullying and acceptance:** The law does **not** prohibit instructing about or intervening against bullying on the basis of sexual orientation or gender identity. It does **not** require removal of safe space stickers or elimination of safe space areas for LGBTQ+ people.
- ❖ **Extracurricular activities:** The law does **not** prohibit Gay-Straight Alliances (GSAs); students may attend GSAs, and teachers and other faculty may participate in GSAs. Schools may have book fairs that include LGBTQ+ themed books and can put on musicals or plays with LGBTQ+ references or characters. The law also allows participation and expression by LGBTQ+ persons in other extracurricular events like school dances. and permits wearing clothing that is affiliated with LGBTQ+ persons or issues, as well as clothing that does not conform to one's perceived gender identity.
- ❖ **Safe Space Stickers/Pride Flags:** The settlement makes clear that symbols of inclusion like "safe space" stickers, which are not part of "classroom instruction," do not violate the law and do not have to be removed.

Note that although nothing in the state law prohibits Pride flags and other expressions of support for LGBTQ+ students, school districts could still attempt to issue policies limiting the display of Pride flags, stickers or signs. Discriminatory or vague bans may violate the U.S. Constitution and possibly other federal or state laws. If your school district is proposing a ban on Pride flags or other displays, consult with FEA about whether there may be a basis to challenge such a ban.

Because the 2023 law's restriction on classroom instruction are based on the same underlying statutory terms, the restrictions set forth above as to the scope of the 2022 law should also apply to the interpretation of the 2023 law's classroom instruction provisions.

Pronouns

The 2023 law (HB 1069) establishes as "policy" in every "public K-12 educational institution" "that a person's sex is an immutable biological trait and that it is false to ascribe to a person a pronoun that does not correspond to such person's sex." Fla Stat. § 1000.071(1). This new policy is also embedded throughout the Florida Education Code by defining "sex" as "the classification of a person as either female or male based on the organization of the body of such person for a specific reproductive role, as indicated by the person's sex chromosomes, naturally occurring sex hormones, and internal and external genitalia present at birth." Fla Stat. § 1001.21(9).

The pronoun ban provision of the law:

- ❖ Prohibits all employees or contractors in a public K-12 school from providing students with their "preferred personal title or pronouns if such personal title or pronouns do not correspond to that person's sex," as defined in the Florida Education Code.
- ❖ Prohibits any requirement that school employees, contractors, and students "be required . . . to refer to another person using that person's preferred personal title or pronouns if such personal title or pronouns do not correspond to that person's sex." Fla Stat. § 1000.071(2).
- ❖ Prohibits asking any student "to provide his or her preferred personal title or pronouns or be penalized . . . for not providing his or her preferred title or pronouns." Fla Stat. § 1000.071(4).

These provisions, while sweeping, should not be read to restrict educators' off-duty speech, as doing so would raise serious First Amendment problems. In other words, these pronoun restrictions apply to educators and contractors only while they are working at school.

The law does not restrict teachers from choosing to use the affirmed title and pronouns of a colleague. Similarly, it does not restrict students from choosing to use the affirmed title and pronouns of their peers. Several school districts have even interpreted this law to allow teachers to use a transgender student's affirmed title and pronouns at the request of their parent(s) in writing. We encourage you to request your district's guidance on pronouns before proceeding with affirming a student in this manner.

A federal lawsuit was filed challenging the pronoun ban as violating Title VII of the Civil Rights Act (Title VII), Title IX of the Education Amendments ("Title IX"), the Equal Protection Clause of the Fourteenth Amendment and the Free Speech Clause of the First Amendment of the U.S. Constitution. In addition, the premise of the law – "that it is false to ascribe to a person a pronoun that does not correspond" to the person's sex at birth – appears to be at odds with the settlement agreement in the Equality Florida case, in which the State agreed that the Don't Say Gay law requires neutrality with respect to instruction on gender identity. A district court recently issued a preliminary injunction that applies to one plaintiff in this case, a transgender teacher who is prohibited from using the pronouns that correspond with her gender identity. The court held that this violates this teacher's expressive rights under the First Amendment.

In addition, as discussed more below, the new Title IX regulations issued by the U.S. Department of Education indicate that repeated misgendering of students or school employees may constitute illegal sex-based harassment under Title IX.

If your school district is enforcing the law to discipline transgender or nonbinary educators for using their appropriate pronouns, contact FEA for assistance.

Reproductive Health Instruction

The Florida Department of Education has restricted to “reproductive health course[s]” and “health lessons,” any classroom instruction on sexual orientation or gender identity. The new law further restricts the materials that may be used in such instruction by providing that:

- ❖ “All materials used to teach reproductive health or any disease, including HIV/AIDS, its symptoms, development, and treatment . . . must be approved by the [D]epartment” of Education. Fla Stat. § 1003.42(1)(b).
- ❖ Schools must “teach that biological males impregnate biological females by fertilizing the female egg with male sperm; that the female then gestate the offspring; and that these reproductive roles are binary, stable and unchangeable.” Fla Stat. § 1003.46(2)(a).

Book Bans

The 2023 law also expedited book banning by expanding on existing law allowing for any parent or resident to object to any instructional material, books or other materials used in the schools whether in classrooms or school libraries. School districts must adopt policies allowing for such objections that include:

- ❖ “[E]asy to read and understand” objection forms that are “easily accessible on the homepage of the school district’s website.” Fla Stat. § 1006.28(2)(a)(2).
- ❖ Parents and residents may object to “pornographic” materials, materials that “[d]epict[] or describe[] sexual conduct,” materials that are “not suited to student needs and their ability to comprehend the material presented,” or materials that are “inappropriate for the grade level and age group for which the material is used.” Fla Stat. § 1006.28(2)(a)(2)(b).
- ❖ School districts must remove materials objected to as pornographic or detailing sexual conduct unless for a required health course “within 5 days of receipt of the objection” until “the objection is resolved.” Fla Stat. § 1006.28(2)(a)(2)(b).
- ❖ “Parents shall have the right to read passages from any material that is subject to an objection. If the school board denies a parent the right to read passages” on the ground the content is pornographic, “the school district

shall discontinue the use of the material.” Fla Stat. § 1006.28(2)(a)(2)(b).

- ❖ Meetings “for the purpose of resolving an objection . . . to specific materials must be noticed and open to the public.” Fla Stat. § 1006.28(2)(a)(5).
- ❖ If a parent disagrees with the determination of the school district on the objection, the parent may request the Commissioner of Education to appoint a special magistrate to determine the facts and render a recommended decision by the State Board of Education. Fla Stat. § 1006.28(2)(a)(6). The State Board, in turn, must approve or reject the recommended decision within 30 days time. Id. The school district must cover the costs of the special magistrate.
- ❖ School boards must publish on their websites “the process for a parent to limit his or her student’s access to materials in the school or classroom library.” Fla Stat. § 1006.28(2)(d)(4).
- ❖ Each school board must submit an annual report documenting all objections and identifying which materials were removed and were not removed as well as the rationale for the decision. Fla Stat. § 1006.28(2)(e)(3).

It should be noted that the settlement in the Equality Florida case makes clear that the 2022 classroom instruction restrictions law does not apply to library books, except if these books are being used in the classroom to instruct on the subjects of sexual orientation or gender identity.

In practice, this provision has been exploited by a small number of individuals to call for banning a massive, unprecedented number of books, prompting Governor DeSantis to feign surprise and call for reforms to target “bad actors.” On March 16, 2024, Governor DeSantis signed HB 1285 into law, which restricts county residents who are not a parent or guardian of a student with access to school district materials to filing an objection to no more than one book per month. This law goes into effect July 1, 2024.

Enforcement

The classroom instruction prohibitions of HB 1557 are enforced through school district complaint procedures that parents may use to raise “concerns” about compliance with the law. Complaints must be resolved within seven calendar days. If the concerns are not resolved internally with the school, a parent may escalate the matter by either (i) triggering an investigation by the Florida Department of Education, at the school’s expense or (ii) suing in court to obtain an injunction, damages, and/or attorney fees. See Fla Stat. § 1001.42(8)(c)(7)(b)

The 2023 law (HB 1069) may also be enforced by school districts through individual disciplinary actions and/or by

non-renewing teachers and other educators at the end of a school year. Since Florida eliminated tenure for educators hired after 2011, a teacher can be dismissed at the end of their annual contracts without cause. Fla. Stat. § 1012.335. And, while tenure protections are available for those hired before 2011, schools may still attempt to portray violations of the law as “gross insubordination” or “willful neglect of duty” that would provide cause for discipline or dismissal. Id. § 1012.33.

It is also possible that a violation of these provisions could expose educators to attempts to suspend or revoke their teaching certificates. State law provides that such action can be taken against any educator who “ha[s] violated the Principles of Professional Conduct for the Education Profession.” Fla. Stat. § 1012.795(1)(j).

Federal Civil Rights Protections for LGBTQ Students and Staff

Existing federal civil rights laws supercede Florida law and prohibit Florida from discriminating against or harassing staff or students based on their sexual orientation or gender identity. That means, for example, that a school district may not prohibit only LGBTQ+ educators from answering students’ questions about their families, may not prohibit recognition and discussion in class only of LGBTQ+ families, and may not require that only LGBTQ+ students hide their sexual orientation or gender identity at school. This is confirmed by the settlement in the Equality Florida case.

Public (and private) school employees are protected under Title VII of the federal Civil Rights Act, which prohibits discrimination against employees based on numerous characteristics, including sex, inclusive of gender identity and sexual orientation. This means that employers cannot consider an employee’s sexual orientation or gender identity when deciding who to hire, fire, or promote, or in assigning responsibilities, setting salary, providing benefits, or determining any other significant aspect of employment. Employers also cannot harass employees based on their LGBTQ+ status or allow others to create a hostile work environment for LGBTQ+ employees. Educators who have been discriminated against or harassed based on their LGBTQ+ status may file a complaint with the [Equal Employment Opportunity Commission \(EEOC\)](#).

Title IX of the Education Amendments of 1972 (Title IX), prohibits discrimination on the basis of sex in schools. Title IX’s protections apply to both students and school employees. On April 19, 2024, the U.S. Department of Education released a final rule amending the Title IX regulations in several

significant ways, including making clear that, in line with its prior guidance and the Supreme Court’s landmark 2020 *Bostock v. Clayton County* decision, Title IX prohibits discrimination on the basis of sexual orientation and gender identity.

These final regulations clarify that schools have an obligation to prevent and address sex discrimination and harassment based on sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity. Under these new regulations, which go into effect August 1, 2024, all schools must have a formal grievance procedure to address complaints of such discrimination or harassment.

The rules make clear that schools cannot discriminate against students by, for example, prohibiting access to extracurricular activities or facilities consistent with a student’s gender identity. (A federal rule applying Title IX to transgender students’ eligibility to participate in schools sports is under development.) Schools also may not harass or permit others to harass LGBTQ+ students. In line with prior interpretations, the new rule suggests that consistently misgendering a transgender student could be considered unlawful harassment. Title IX also protects students and educators from retaliation for complaining about such discrimination or harassment.

Although Title IX is typically thought of as protecting students, it also applies to school employees, and like Title VII, prohibits employment discrimination, including sex-based harassment. Title IX also protects against forms of discrimination not specifically included in Title VII (such as discrimination in fringe benefits; selection and financial support for training and conferences; employer-sponsored activities, including those that are social or recreational; and leave related to pregnancy, childbirth and termination of pregnancy, see 34 CFR § 106.51(b)). Educators can file complaints about a school’s failure to comply with Title IX with the [U.S. Department of Education’s Office of Civil Rights \(OCR\)](#).

If you believe that your school district is implementing the original classroom instruction restrictions law (HB 1557) or the 2023 law (HB 1069) in a way that violates these federal civil rights protections, contact FEA for assistance. Harassment and discrimination can also be reported to OCR, [here](#), or to the U.S. Department of Justice, [here](#).