

Advocating for Freedom to Learn: Strategies to Counter Attacks on Inclusive Education June 2024

Since January of 2021, bills attacking inclusive education practices at the K-12 and higher education level have gained traction and become law in many states. And even where state laws have not been passed, similar policies have been adopted by local school boards.

As of June 2024, twenty-two states have adopted one or more measures (laws or other state rules) to restrict what is taught in K-12 schools and/or higher education institutions. In 2021 and 2022, most of these censorship measures aimed at the K-12 level and targeted how instruction on issues of race and racism is provided (AL, AZ, AR, FL, GA, ID, IA, KY, MS, NH, ND, OK, SC, SD, TN, TX, UT and VA). Since 2023, the focus of the proposals has shifted to how schools recognize and respond to LGBTQ+ students, with six states (AR, AL, IA, IN, KY, NC) following Florida's lead by passing "Don't Say Gay" laws that censor discussions of LGBTQ+ people or issues, three more states (AZ, TN, WY) requiring advance notice of LGBTQ-related curricula and parental opt-ins to such inclusive curriculum, while one state (MT) allows for such curriculum so long as parents can opt-out their child.¹ For specific information about these new laws see NEA's state-specific [Rights](#) guides.

¹ Since 2022, many states have enacted laws that target LGBTQ+ students and subject them to discriminatory treatment. Such laws include ones that require educators to report LGBTQ+ students to their parents for engaging in conduct that would not trigger a report for non-LGBTQ+ students, as well as laws restricting LGBTQ+ students' access to facilities consistent with their gender identity and to play on sports teams consistent with their gender identity. These laws appear to squarely violate Title IX as interpreted by the U.S. Department of Education and are beyond the scope of this guidance.

NEA and its affiliates have sought to block and blunt these laws through the legislative process, have worked to limit their reach once passed through Know Your Rights strategies, and have sued to prevent their enforcement including the successful challenges in Iowa to that state’s book and curriculum bans, and in Arizona and New Hampshire to those states’ prohibitions on teaching so-called “divisive concepts.” And promising litigation is underway in Tennessee and elsewhere. NEA also has worked with affiliates to defend teachers attacked for choosing to teach in a way that honors and engages all students of every race, nationality, sexual orientation and gender identity. NEA remains committed to defending its members targeted in such attacks.

At the local, state and national level, there is more to be done. NEA’s [Educator Advocacy Guide](#) provides general guidance for educators looking to , including by participating in school board meetings, getting involved in local elections, and advocating for policy changes on social media.

What follows are some more recommended steps to take at the local and state level to protect inclusive education practices and the educators who provide such education.

I. Steps to Take at the Local Level

State laws regarding how instruction is to be delivered are enforced at the local level through school district policies and, in those districts with bargaining, collective bargaining agreements. Review your policies and agreements to determine how they address instruction, particularly, whether they prohibit or limit in some respect teaching “controversial subjects” or require parental notification in advance of providing certain instruction. Consider the following issues when reviewing your policies and agreements.

A) Protections for Professional Practice

- Do the policies and/or agreements protect educators who provide instruction and support in line with established state standards or, where no such standards exist, national standards for how such instruction or support is to be provided? If it is unclear which standards should govern, do the policies and/or agreement identify the standards?
- Do the policies and/or agreements protect educators who read or make available books that are age appropriate according to established standards?
- Do the policies and/or agreements provide educators with a safe harbor against discipline so long as they are instructing or supporting students in a manner that is in line with state standards or prior practice in the school or school district?
- Do the policies and/or agreements ensure that educators determine whether or not professional practice standards have been violated rather than third parties who are not professional educators?
- Do the policies and/or agreements support educators who display symbols of inclusion (e.g., BLM and PRIDE flags) in their classrooms and work areas?
- Do the policies and/or agreements protect the professional expertise of educators to decide when parents should be notified of particular behavior by a student that they should be aware of?

B) Due Process Requirements

- Do the policies and/or agreements require that educators be placed on notice before being disciplined for instructional practices?

- Do the policies and/or agreements reserve termination for egregious acts of intentional misconduct and thereby shield educators for instructional judgment calls that may have been mistaken but were not intentional violations of school policy?

C) Independent Review of Termination Decisions

- Do the policies and/or agreements provide for independent review of any termination recommendations? In many states, local school boards are the final decisionmaker on all terminations. Such policies leave educators exposed and vulnerable to local politics. Consider whether the discretion of the school board can be limited in some way or eliminated altogether for all or some termination matters.

Some alternative approaches to resolving termination disputes that are worth considering but may require an effort at the state level to amend your state tenure law can be found below. An overview of state tenure protections is available in [NEA's Educator Advocacy Guide](#).

- In Kentucky, the local commissioner of education appoints a three-member tribunal to conduct the hearing and issue a final order. The tribunal consists of one teacher, one administrator, and one attorney, all from outside the district. [Ky. Rev. Stat. Ann. § 161.790](#).
- In California, Michigan, and Oregon, an independent panel or agency issues a final decision. See [Cal. Educ. Code § 44944](#) (three-member panel of the Commission on Professional Competence); [Mich. Comp. Laws § 38.104](#) (administrative law judge conducts hearing and Tenure Commission issues final decision); [Or. Rev. Stat. Ann. § 342.905](#)(6), (7) (three-member panel of Fair Dismissal Appeals Board).
- Arbitration is also used in some states for termination proceedings, and the decision of the arbitrator is final and binding on both parties. See [Mass. Gen. Laws ch. 71 § 42](#); [N.J. Stat. Ann. § 18A:6-17.1](#).

- In other states, an educator can choose arbitration instead of a hearing before the school board. See [Md. Code Ann., Educ. § 6-202](#); [Minn. Stat. Ann. § 122A.40](#).
- Rhode Island law allows bargaining for arbitration of disputes related to nonrenewal, suspension, and dismissal, so whether arbitration is an option will depend on the local collective bargaining agreement. [R.I. Gen. Laws § 16-13-4](#). And in Nevada, the parties to a termination hearing can agree before the hearing officer is selected that the hearing officer decision is final and binding on all parties, similar to an arbitration award. [Nev. Rev. Stat. Ann. § 391.795](#).
- Some states allow for an independent hearing officer to fully resolve termination disputes, including Louisiana (where a disciplinary hearing officer issues a final written determination), Utah (where the school board can delegate authority to a hearing officer to make decisions that are binding on the employee and board), and West Virginia (where an administrative law judge conducts the hearing and issues the decision). See [La. Rev. Stat. Ann. § 17:443\(B\)\(2\)\(b\)](#); [Utah Code Ann. § 53G-11-515](#); [W. Va. Code Ann. §§ 18A-2-8, 6C-2-4](#).
- In other states that use independent hearing officers but retain board discretion to terminate an educator against the recommendation of an independent hearing officer, the law should require, as in the following states, that the board issue a written order with the reasons for, and conclusion reached, by the board. See [Colo. Rev. Stat. § 22-63-103\(9\)](#); [105 Ill. Comp. Stat. 5/24-12\(d\)\(8\)](#); [N.Y. Educ. Law § 3020-a\(4\)](#); [Tex. Educ. Code § 21.257-59](#); [Wyo. Stat. Ann. § 21-7-110\(g\)](#).
- Finally, in a few states the hearing officer or administrative law judge can determine that some charges were frivolous or that one party was acting in bad faith. See [N.Y. Educ. Law § 3020-a\(4\)](#); [W. Va. Code Ann. § 6C-2-4](#). Because such a determination comes with a monetary penalty, this statutory language may incentivize school boards to resist making decisions contrary to the well-reasoned opinion of an independent hearing officer.

D) Clarify Protections for Off Duty Speech and Advocacy

- Do the policies and/or agreements make clear that educators are free when off duty to express their personal views, provided that they do so in a way that is respectful and does not violate students' rights to privacy?
- Do the policies and/or agreements make clear that educators are free to use social media and speak up on matters of public concern at school board meetings, just like every other citizen, provided that if they are commenting on school district matters they are doing so in a way that is respectful of individuals and does not violate students' rights to privacy?

E) Require Districts to Protect Educators Subject to Doxxing or Other Abuse

- Do the policies and/or agreements require the school district to set up protocols that shield educators while at work from interference and abuse and that protect them after hours from doxing? For example:
 - Do the policies require that complaints by community members about an educator be routed to a school administrator rather than being routed directly to the educator?
 - Do the policies require the district to affirmatively protect educators targeted for doing their job by, for example, issuing a public statement in support of the educator, reporting the harassment to the police department and local

prosecutor, and protecting private employee information including addresses and personal emails?

- Do the policies include provisions related to workplace safety and abuse of school IT resources?

II. Steps to Take at the State Level

State laws that affirmatively require inclusive education, that prohibit discrimination and that protect against book bans can provide important protections against local attacks on inclusive education and ward off proposals at the state level to rollback such protections. Measures along these three lines are reviewed briefly below.

a) Requiring Inclusive Education

Some states have adopted laws that require instruction that accurately portrays the cultural and racial diversity of our society and that require schools to highlight the roles and contributions of individuals from different racial, ethnic and other protected groups. Educators know that curriculum and instruction that is racially inclusive and culturally responsive is more effective and engaging for all students. *See, e.g., [The Very Foundation of Good Citizenship: The Legal and Pedagogical Case for Racially Inclusive and Culturally Responsive Education for All Students](#)*. State laws that mandate such approaches can protect such best pedagogical practices from political push back at the local school district level.

Such laws mandate that local school districts ensure that their instructional materials “accurately portray the cultural and racial diversity of our society,” including the roles and contributions “of people of all genders” and of all races and ethnicities including “Native Americans, African Americans, Latino Americans, Asian Americans, Pacific Islanders, European Americans, LGBTQ+ Americans, persons with disabilities, and members of

other ethnic, cultural, religious, and socioeconomic status groups . . .” [Cal. Educ. Code § 60040](#). Similarly, such laws include mandates that all school boards adopt by 2025 inclusive curricula and select diverse, equitable, inclusive and age-appropriate instructional materials that include the histories, contributions and perspectives of historically marginalized and underrepresented groups. *See* [2024 Wash. Laws ch. 157](#). This sweeping Washington effort was preceded by the efforts of a multi-year Ethnic Studies Commission, which provided a statewide platform for engaging individuals and collecting best instructional practices (see [here](#) for a review of the Commission’s activities).

Such laws also include mandates that all high schools offer ethnic studies classes by a certain date and that all students must complete an ethnic studies class to graduate by a certain date. *See* [Cal. Educ. Code § 51225.3](#) (requiring that all high schools offer ethnic studies by the 25-26 school year and that students complete such a class to graduate as of 2030). Along similar lines, some states require that every school district must include African-American, Latino and Puerto Rican studies in their curriculum (*see* [Conn. Gen. Stat. § 10-16b](#)), that all school districts must provide instruction on African-American history (*see* [R.I. Gen. Laws § 16-110-3](#), and [20-A Me. Rev. Stat. § 4706](#)), recognizing “the fundamental responsibility of the state of Rhode Island,” for example, “to ensure that the critical subject of African Heritage History is included” in all public school curriculum. [R.I. Gen. Laws § 16-110-1](#).

b) Protecting Schools as Safe Learning Places

Many states have laws that require school districts to prevent discrimination and harassment of students based on protected characteristics. *See, e.g.*, [Cal. Educ. Code § 234-234.5](#); [N.Y. Educ. Law §§ 10–18](#); [N.J. Stat. Ann. § 18A:37-15](#). Such laws provide a basis for challenging local school district actions that censor certain curriculum or viewpoints based on protected characteristics. For example, many efforts to ban books or censor instruction are focused and have the result of silencing only instruction about race or

racism or about LGBTQ+ individuals and rights. Such viewpoint discrimination arguably violates basic state anti-discrimination provisions. Similarly, local school district policies or practices that deny students access to programs and facilities consistent with their gender identity also may run afoul of state anti-discrimination laws guaranteeing such access. *See, e.g.,* [Cal. Educ. Code § 221.5\(f\)](#).

Some states also require professional development for educators to ensure that they have the skills to provide racially inclusive and culturally responsive education to their students and/or have the skills to support their LGBTQ+ students. *See, e.g.,* [Cal. Educ. Code § 218](#). Such laws provide a basis for spreading best practices and skills across the education professions, providing stronger support for all students.

c) Protecting Libraries and Librarians

In response to the alarming rise in book bans in 2023, with over 4,200 books targeted in schools and public libraries, many of which (some 47% according to the [American Library Association](#)) address LGBTQ+ and racial themes, a number of states have passed what have been called “Freedom to Read” laws protecting libraries and librarians.

One of the first such laws, [HB 2789 passed by Illinois in 2023](#), requires public libraries to adopt the American Library Association’s Bill of Rights in order to be eligible for state grants. The Bill of Rights prohibits removing materials based on “partisan or doctrinal disapproval.” Even more pointedly, [AB 1078 passed by California in 2023](#), prohibits as unlawful discrimination the removal of instructional or supplemental materials including library materials on the ground that they examine the “role and contributions of any individual or group” that is protected against discrimination.

Washington passed a more comprehensive approach this past spring that protects school libraries and instructional material more broadly. [HB 2331](#) prohibits schools from excluding materials because they “relate[] to or

include the study of the role and contributions of any individual or group who is part of a protected class” unless the materials violate Washington’s civil rights laws or contain bias against a protected class. The new law also requires school districts to adopt or revise as needed any policies regarding review and removal of instructional materials to require that any requests be written, come from a parent with a student in the school or district, should be resolved at the building level, and that the principal should consult with a teacher or teacher librarian in resolving the matter. Appeals from the principal’s decision may be taken by the parent or the teacher to the district superintendent.

Maryland also passed a Freedom to Read Act in 2024 ([HB0785/CH012](#)). The Act establishes standards for school libraries including establishing that the materials in a library are provided for student instruction and may not be excluded “solely because of the origin, background, or views of the individual who created the material” or due to “partisan, ideological, or religious disapproval.” The Act also requires school districts to establish a policy for handling objections to materials in school libraries from students or their parents, one that allows materials to remain available while the review is underway. Notably, the Maryland Act also prohibits dismissal or discipline of librarians or library media specialists or support staff for performing their job duties in accordance with the new statute.

Similar bills are pending in many other states. To see a current list of proposals, see this [tracker](#) from EveryLibrary. If you have a favorable school district in your state, you may be able to secure similar protections in local school district policies.