



What You Need to Know about Florida's “Don't Say Gay” and “Don't Say They” laws, Book Bans, and Other Curricula restrictions

In the spring of 2022, Florida Governor Ron DeSantis signed into law HB 1557, referred to as the “Don’t Say Gay” bill. The law took effect July 1, 2022. The Don’t Say Gay law stated that its purpose was to “prohibit[] classroom discussion about sexual orientation or gender identity in certain grade levels or in a specified manner.” Two different federal lawsuits are pending that challenge the 2022 law. HB 1069, which was passed and signed into law in May of 2023, expands on the classroom instruction provisions of the 2022 law and adds sweeping new provisions prohibiting the use of pronouns consistent with one’s gender identity, expands book banning procedures, and censors health curriculum and instruction. The [new law](#) takes effect on July 1, 2023, and therefore is not a basis for any changes to school practices before that date. HB 1069 has been referred to as the “Don’t Say They” law due to its gender pronoun restrictions.

This overview is intended to provide immediate guidance for members and allies confronting efforts to enforce the original Don’t Say Gay law and the even more far-reaching provisions of HB 1069 in their schools and classrooms. The number of new provisions may seem overwhelming. Teachers were already confused by what was prohibited and not prohibited by the initial Don’t Say Gay law. Know that FEA is here to support teachers and will continue to update members with guidance on how to navigate these difficult issues. The FEA Legal Services Department will defend all FEA members in employment-related actions.

Classroom Instruction

The 2022 Don’t Say Gay law prohibited any classroom instruction on sexual orientation and gender identity in grades kindergarten through three and provided further that such instruction was permitted in subsequent grades only if age and developmentally appropriate. The new law expands the absolute bar on classroom instruction “on

sexual orientation or gender identity” to prekindergarten through eighth grade except if such instruction is required for health lessons on sexual abstinence or HIV in grades six through eight. Fla Stat. § 1001.42(8)(c)(3). Additionally, the new law continues the requirements that such instruction in subsequent grades must be age and developmentally appropriate. Id. The new law also extends these prohibitions to charter schools.

The Florida Department of Education also has updated its [Principles of Professional Conduct for the Education Profession in Florida](#) to state that Florida educators must “not intentionally provide classroom instruction to students in grades four through twelve on sexual orientation or gender identity unless such instruction is either expressly required by state academic standards . . . or is part of a reproductive health course or health lesson for which a student’s parent has the option to have his or her student not attend.” Reading these revisions in line with the new statutory provisions, these new requirements would apply only in those grades in which classroom instruction on sexual orientation or gender identity is allowed and would restrict such instruction to either health courses or lessons or instruction expressly required by the state’s academic standards.

These classroom instruction prohibitions are subject to the same rigorous enforcement provisions as the original Don’t Say Gay law, which required school districts to create a complaint procedure through which parents may 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).

Pronouns

The new law 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 new law further 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. School employees, contractors, and students "may not 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). Students also may not be asked "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 refer to, or restrict, educators' off duty speech as doing so would raise serious First Amendment problems. You should be aware though that school boards and the Florida Department of Education have often taken disciplinary actions against employees for their off-duty speech.

To the extent these pronoun restrictions are seized on by a school district to justify disciplinary action against a transgender educator for using their preferred pronouns at work, the provisions of HB 1069 raise a serious problem under Title VII of the Civil Rights Act (Title VII). If your school district is enforcing the new law in that manner, contact FEA for assistance in determining what actions to take, including by filing complaints with state and federal agencies.

The statute provides that "[t]he State Board of Education may adopt rules to administer this section," Fla Stat. § 1000.071(5), and such rules have not yet been adopted as of the date of publication.

Reproductive Health Instruction

As noted, 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 new law also sanctions and expedites 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 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).

Enforcement

Beyond the specific enforcement provisions noted above, the provisions of the new law, like those of the 2022 Don’t Say Gay Law, may 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 the Florida legislature eliminated Professional Service Contracts for educators hired after 2011, a teacher can be dismissed at the end of their annual contracts without cause. Fla. Stat. § 1012.335. While tenure protections are available for those hired before 2011, schools may still attempt to portray violations of the law as “gross insubordination” or “misconduct in office” that could potentially be used as grounds for discipline or dismissal. Id. §§ 1012.33, 1012.335; Fla. Admin. Code R. 6A-5.056. Education support professionals could be subject to similar disciplinary sanctions for violating HB 1557 (2022) and HB 1069 (2023), but unlike teachers hired after 2011, they enjoy continuing employment status once they have completed their probation. Fla. Stat. § 1012.40(2)(b).

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). Indeed, it is theoretically possible that any educator could be subjected to such actions for simply failing to report a colleague they suspect of violating a provision of the law (see R. 6A-10.081(2)(c)(14)) requiring educators to “report to appropriate authorities any known allegation of a violation of the Florida School Code or State Board of Education Rules”), although given the uncertainties as to the law’s scope, such actions appear to be unlikely.

FEDERAL CIVIL RIGHTS PROTECTIONS FOR LGBTQ STUDENTS AND STAFF

Federal civil rights laws prohibit school boards and other employers 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. However, some school districts, administrators, and the Florida Department of Education may nonetheless choose to do so until a court orders otherwise.

Public and private school employees are protected under Title VII of the Civil Rights Act of 1964, 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 lawfully 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 \(EEOC\)](#) or its Florida equivalent, the Florida Commission on Human Relations (FCHR).

Title IX of the Education Amendments of 1972 (Title IX), prohibits discrimination on the basis of sex in schools, including discrimination on the basis of gender identity and sexual orientation. The U.S. Department of Justice and the U.S. Department of Education have both endorsed that interpretation of Title IX in light of the Supreme Court's landmark 2020 *Bostock v. Clayton County* decision. 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 may seek redress under Title IX by filing a complaint with [the U.S. Department of Education's Office of Civil Rights \(OCR\)](#).

Title IX also protects students from harassment and discrimination based on sexual orientation or gender identity. That means schools cannot discriminate against students by, for example, prohibiting access to extracurricular activities consistent with a student's gender identity. Schools also may not lawfully harass or permit others to harass LGBTQ+ students.

As Title IX has been interpreted, 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. Students may seek redress under Title IX by filing a complaint with OCR. For steps schools can take to confront anti-LGBTQ+ discrimination and harassment in schools and examples of such harassment, see this [guidance](#) from the U.S. Department of Education and the U.S. Department of Justice.

If you believe that your school district is implementing these laws in a way that violates these federal civil rights protections, please contact your local union, which may seek further guidance from FEA, on whether your employer's policies are lawful. Harassment and discrimination can also be reported to OCR, [here](#), or to the U.S. Department of Justice, [here](#).