

Date: April 27, 2023

To: Dr. Maria Vazquez, Superintendent
Dr. Michael Armbruster, Deputy Superintendent

From: John C. Palmerini, Deputy General Counsel
Office of Legal Services

Recipients: Cabinet, Area Superintendents, Associate Superintendents, Executive Area Directors-on-Assignment, Principals, Assistant Principals, and Technical College Directors

Subject: Changes to Rule 6A-10.081, the Principles of Professional Conduct for the Education Profession in Florida regarding classroom instruction on sexual orientation and gender identity.

All Principals/Technical College Directors shall distribute a copy of this memorandum to instructional personnel.

On April 19, 2023, the State Board of Education gave its final approval to Fla. Admin. Code R. 6A-10.081 titled the “Principles of Professional Conduct for the Education Profession in Florida.” This rule will become effective in the next month.

This new rule provides for potential disciplinary action for teachers and provides potential sanctions to teaching certificates. To demonstrate the importance of the Principles of Professional Conduct for the Education Profession in Florida (“Principles”), violation of the Principles is just cause for suspension or dismissal of a teacher by the School Board pursuant to §§1012.33(1)(a) and 1012.335(5)Fla. Stat., and Fla. Admin. Code R. 6A-5.056(2)(b). The statutes allow school boards to dismiss a teacher for “misconduct in office.” The Rule defines “misconduct in office” as including a violation of the Principles. Violations of the Principles also is justification for sanctions against a teacher’s certificate, including suspension and revocation of the certificate, pursuant to §1012.795(1)(j), Fla. Stat.

The new Rule makes it a violation of the Principles for a teacher to “intentionally provide classroom instruction to students in grades 4 through 12 on sexual orientation or gender identity unless such instruction is either expressly required by state academic standards adopted in Rule 6A-1.09401, F.A.C. 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.”

Unless a teacher can expressly point to a Florida state academic standard which addresses sexual orientation or gender identity or unless the teacher is teaching a reproductive health course, the teacher cannot provide classroom instruction on sexual orientation and gender identity.

The state has defined “classroom instruction” in its response to the Equality Florida lawsuit as “the action, practice or profession of teaching.” The State also stated in response to the Equality Florida lawsuit the following regarding classroom instruction on sexual orientation and gender identity:

- The Bill equally prohibits instruction on heterosexuality and all other types of sexuality: “The statute limits classroom instruction on ‘sexual orientation or gender identity.’ Nothing in that



language ‘aims at sexual orientations and gender identities that differ from heterosexual and cisgender identities.’ To the contrary, instruction on ‘the normalcy of opposite-sex attraction’ would equally be ‘instruction on sexual orientation.’ The statute is neutral on the proscribed subjects.” A “cisgender” identity is when a person’s gender identity corresponds with the person’s birth sex.

- “There is no merit, for example, to the suggestion that the statute restricts gay and transgender teachers from ‘put[ting] a family photo on their desk’ or ‘refer[ring] to themselves and their spouse (and their own children).’ Those actions are not ‘instruction,’ which is ‘the action, practice, or profession of teaching.’”
- The Bill “does not prohibit intervention against LGBTQ bullying, participation in extracurricular activities (such as Gay-Straight Alliances or book fairs) and even after-hours tutoring, among many other examples.” OCPS still allows Gay-Straight Alliances, as required under the Federal Equal Access Act, 20 U.S.C. §4071. See also Carver Middle School Gay-Straight Alliance v. School Board of Lake County, Florida, 842 F.3d 1324 (11th Cir. 2016). While non-school personnel “may not direct, conduct, control or regularly attend activities of student groups,” student clubs may have guest speakers. See Student Coalition of Peace v. Lower Merion School District Board of School Directors, 776 F.2d 431 (3d Cir. 1985). Club sponsors shall check with their administrator regarding any questions about whether a guest speaker is appropriate for a student club meeting.
- The Bill restricts “instruction” on sexual orientation and gender identity, not mere discussion of those subjects. In fact, an earlier version of the Bill prohibited classroom “discussion” about sexual orientation and gender identity, but the prohibition of classroom “discussion” rather than “instruction” on sexual orientation and gender identity did not make it into the final Bill.
- Teachers are “free to ‘respond if their students discuss ... their identities or family life,’ ‘provide grades and feedback if a student chooses ‘LGBTQ identity’ as an essay topic and answer ‘questions about their families.’”
- The State said “no one should think that H.B. 1557 prohibits incidental references in literature to a gay or transgender person or to a same-sex couple. Such references, without more, are not ‘instruction on’ those topics. Nor are ‘references’ to a student’s ‘mom’ and ‘dad’ ‘instruction’ on cisgender identity or heterosexual orientation. Such references could be to a person of any sexual orientation or gender identity.”
- The State said “typical class participation and schoolwork are not ‘instruction,’ even if a student chooses to address sexual orientation or gender identity.”

Based upon this guidance, the mere wearing of an “Ally” lanyard or rainbow symbols on clothing or in classrooms, or the display of “safe space” stickers in the classroom are not “classroom instruction” as defined by the State.

If you have any further questions, please do not hesitate to contact me at extension 2002954.