

Fwd: HB 1557 Clarification in State's Motion to Dismiss - Equality Florida Lawsuit

Jacobs, Teresa S. <Teresa.Jacobs@ocps.net>

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To:

- Doromal, Wendy <wendy.doromal@floridaea.org>

1 attachments (245 KB)

2022-0627 Docket 68 State Motion to Dismiss.pdf;

[EXTERNAL EMAIL]

Wendy,

Thank you for reaching out to us about this forum. Please see the attached document which starts to shed more light on how the law is likely to be interpreted. I hope this is helpful!

Teresa Jacobs
School Board Chair
Orange County Public Schools
45 W. Amelia St., Orlando, Florida 32801
407-317-3236
www.ocps.net

From: Envall, Amy D. <Amy.Envall@ocps.net>

Sent: Tuesday, June 28, 2022 2:51:09 PM

To: School Board <schoolboard@ocps.net>

Cc: Jenkins, Barbara M. <barbara.jenkins@ocps.net>; Vazquez, Maria F. <maria.vazquez@ocps.net>; Palmerini, John C. <John.Palmerini@ocps.net>; Cabinet <cab@ocps.net>

Subject: HB 1557 Clarification in State's Motion to Dismiss - Equality Florida Lawsuit

Dear School Board Members,

Yesterday, in the *Equality Florida, et al. v. DeSantis, et al.* case (in which the School Board is a named Defendant), the State filed its Motion to Dismiss (attached hereto). As part of that Motion to Dismiss, the State provided clarification and guidance on the meaning of HB 1557 Parental Rights in Education. This is the most extensive guidance that the State has provided. This will assist school districts in interpretation of the law and in providing guidance to staff. The clarifications and guidance are as follows:

- "As a threshold matter, only the instructional restriction applicable to kindergarten through third grade takes effect on July 1, 2022. For older children, the bill ties the prohibition of instruction that is not "age-appropriate" or "developmentally appropriate" to "state standards" that have not yet been adopted and need not be adopted for another year." – page 16
- "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." ECF 47 ¶ 15 (emphasis omitted). To the contrary, instruction on "the normalcy of opposite-sex attraction" would equally be "instruction on sexual orientation." Id. ¶ 11. The statute is neutral on the proscribed subjects." – page 17
- "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)." Id. ¶ 8. Those actions are not "instruction," which is "the action, practice, or profession of teaching," Instruction, Merriam-Webster's Dictionary (last visited June 26, 2022)." – page 17
- "For the same reason, the statute does not prohibit intervention against LGBTQ bullying, participation in extracurricular activities (such as "Gay-Straight Alliances" or books fairs), and even after-hours tutoring, ECF 47 ¶¶ 8, 118–19, 121, 184, among many other examples. That is not "classroom instruction" covered by the statute." – page 18
- "The bill thus restricts instruction on particular subjects (sexual orientation and gender identity), not mere discussion of them. Consistent with that view, the Legislature rejected a restriction on "encourag[ing] classroom discussion

about" the prescribed subjects in favor of a limited restriction on "classroom instruction." Compare An Act Relating to Parental Rights, CS/HB1557 (Jan 21, 2022), with H.B. 1557 § 1." – pages 18-19

- "The statute thus leaves teachers free to "respond if 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." ECF 47 ¶¶ 8, 120. For kindergarten through grade three, they simply must not handle these situations by teaching the subjects of sexual orientation or gender identity. And like other subject-matter education, that is most naturally understood in terms of the underlying concepts." – page 19
- "So too here, "instruction on sexual orientation or gender identity" would include teaching an overview of modern gender theory or a particular view of marriage equality. But just as no one would suggest that references to numbers in a history book constitute "instruction on mathematics," 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. Id. ¶ 8. Such references, without more, are not "instruction on" those topics. Nor are "refer[ences] to a student's 'mom' and 'dad'" "instruction on" cisgender identity or heterosexual orientation. Id. ¶ 11. Such references could be to a person of any sexual orientation or gender identity." – page 19
- "But all that means is that schools cannot evade the bill's limits by delegating "classroom instruction" on the prescribed topics to an individual other than a teacher, be it a parent, student, guest lecturer, or anyone else. But typical class participation and schoolwork are not "instruction," even if a student chooses to address sexual orientation or gender identity." – page 20
- "Plaintiffs are likewise incorrect to suggest that, under H.B. 1557, parents may "sue schools for damages whenever they believe a teacher, any other 'school personnel,' or any 'third party' has provided any 'classroom instruction' that may be perceived as relating to 'sexual orientation' or 'gender identity.'" ECF 47 ¶ 5. Even putting aside Plaintiffs' gross overreading of the scope of the prohibition, see supra pp. 16–20, parents cannot just sue whenever they believe prohibited classroom instruction has occurred. They may sue only to challenge an unlawful "school district practice or procedure." H.B. 1557 § 1. Even then, before suing, parents must first exhaust two other avenues of relief by "notify[ing] the principal . . . regarding concerns under this paragraph," and then, if "the concern remains unresolved" after 30 days, notifying the school district, which "must either resolve the concern or provide a statement of the reasons for not resolving the concern." Id. Only then, with the school district's "statement of the reasons" in hand, may the parent choose between administrative proceedings with the State Board of Education (the cost of which shall be borne by the school district) or litigation against the school district in state court." – pages 20-21

Warm regards,

Amy D. Envall
General Counsel
Office of Legal Services
Orange County Public Schools
 445 West Amelia Street, Orlando, Florida 32801
 Phone: 407-317-3411
 Fax: 407-317-3348
www.ocps.net

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