

Frequently Asked Questions on Recently Enacted Changes to the Law

1. Can I be fired for being an open member of the LGBTQ community?

Answer: No. Under the United States Supreme Court decision in Bostock v. Clayton Cnty., Georgia, 207 L. Ed. 2d 218 (2020), OCPs cannot fire an employee for being an open member of the LGBTQ community under Title VII of the Civil Rights Act of 1964: “Today, we must decide whether an employer can fire someone simply for being homosexual or transgender. The answer is clear. An employer who fires an individual for being homosexual or transgender fires that person for traits or actions it would not have questioned in members of a different sex. Sex plays a necessary and undisguisable role in the decision, exactly what Title VII forbids.”

2. What are the rules regarding bathrooms?

Answer: The State of Florida has criminalized entry by any person into a restroom or changing room (i.e. a locker room) which does not match the person’s biological sex at birth by allowing for the criminal offense of trespass. With respect to students, the new state law requires the District to ensure that students who enter a restroom or changing room which does not match the biological sex at birth are subject to discipline under the Code of Student Conduct. Transgender staff and students will be accommodated with single stall restrooms and/or alternate areas to change clothes.

3. If a student asks a teacher/staff member if they are gay, does the teacher/staff member have the right to answer the student honestly?

Answer: The State of Florida, in response to a lawsuit filed challenging the Parental Rights in Education Act, stated as follows: “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.’” Teachers/staff members may honestly state their sexual orientation if asked. However, there should be no classroom instruction on sexual orientation or gender identity in grades kindergarten through 8 nor may there be instruction on sexual orientation and gender identity in grades 9 through 12 unless such instruction is required by state academic standards as 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.

4. If a student shares with a teacher/staff member their sexual orientation or gender identity, can the teacher/staff member respond to the student's disclosure?

Answer: If a student discloses personal information such as sexual orientation or gender identity, teachers must encourage the child to discuss such information with their parents. The District “may not adopt procedures or student support forms that prohibit school district personnel from notifying a parent about his or her student's mental, emotional, or physical health or well-being, or a change in related services or monitoring, or that encourage or have the effect of encouraging a student to withhold from a parent such information. School district personnel may not

discourage or prohibit parental notification of and involvement in critical decisions affecting a student's mental, emotional, or physical health or well-being.”

- If a student makes a disclosure to a teacher about the student's mental, emotional or physical health or well-being (including the student's sexual orientation or gender identity), and if the parent asks the teacher if the student has disclosed such information, then the teacher must disclose such information to the parent, including the student's sexual orientation or gender identity.
- A teacher should inform the student that if the teacher is asked about the conversation by the student's parents, the teacher will have to disclose the information, including the student's sexual orientation.
- If there is monitoring of the student's mental, emotional or physical health or well-being (i.e. a student is told to visit the school counselor every Wednesday to monitor how the student is doing after the student disclosed his/her sexual orientation), the parent must be affirmatively told what monitoring is taking place and why.
- If the student merely informs the school staff member of their sexual orientation and there is no need to have further monitoring of the student's mental, emotional or physical health or well-being, then there is no affirmative requirement to inform the parent.
- The School District is allowed to adopt procedures that permit school personnel to withhold information from a parent “if a reasonably prudent person would believe that the disclosure would result in abuse, abandonment or neglect...” Those terms are defined in Management Directive A-4, a link to which is found [here](#).

5. What do I do if a student brings up the fact that they have two fathers or two mothers?

Answer: Nothing prohibits the mere mention by a student that he has two same-sex parents. The State of Florida, in response to a lawsuit filed challenging the Parental Rights in Education Act, stated as follows: 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.’”

6. Can a student mention LGBTQ issues in their classwork?

Answer: A student may mention LGBTQ themes in their classwork if the student is allowed to address any theme they want as part of their classwork. The State of Florida, in response to a lawsuit challenging the Parental Rights in Education Act, stated as follows: “typical class participation and schoolwork are not ‘instruction,’ even if a student chooses to address sexual orientation or gender identity.” The work must be graded the same as all other subject matter. If a student is given a specific writing prompt and the student does not address the writing prompt but instead addresses LGBTQ issues, the student can be marked down for not following the instructions in the writing prompt.

7. What are the new changes with pronouns for students and employees?

Answer: House Bill 1069, passed in the 2023 Legislative Session, requires as follows:

- “Sex” is defined as the hormones and genitals present at birth. This means a student’s sex or employee’s sex is defined by birth sex, not the gender in which the student or employee identify.
- The bill states that ‘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.” Since sex is identified as determined by the genitalia “present at birth” that means a person’s sex is his or her biological sex at birth under House Bill 1069.
- The bill states that employees, contractors or other students may elect not to utilize the pronoun preferred by a child and his/her parents and instead may utilize pronouns based upon the child’s biological sex at birth.
- The bill states that a transgender employee or contractor may not provide a personal title or pronoun to students which does not match the employee’s or contractor’s biological sex at birth.
- The bill states an employee or contractor may not ask a student to provide his or her preferred personal title or pronoun. A copy of the memorandum may be found [here](#).

8. What name may I call student?

Answer: The State Board passed a new rule stating that the School Board must adopt a policy for education records which must include for parents to specify the use of any deviation from the child’s legal name (i.e. Robert being referred to as Rob). The parent may [fill out this form](#). For example, a student’s legal name is Robert and his biological sex at birth is male. However, the student is now a transgender girl whose name is Roberta. The parents may fill out a form and have the student referred to as Roberta, even though the student’s legal name is Robert. However, under House Bill 1069, employees or other students may elect not to utilize the she/her pronouns when referring to Roberta.

9. Does my classroom library have to be reviewed by a certified media specialist on campus?

Answer: Yes. Under the newly enacted House Bill 5101, a “library media center” is defined as “any collection of books, ebooks, periodicals, or videos maintained and accessible on the site of a school, **including in classrooms**.” Under the law “Each book made available to students through a school district **library media center** or included in a recommended or assigned school or grade-level reading list must be selected by a school district employee who holds a valid educational media specialist certificate, regardless of whether the book is purchased, donated, or otherwise made available to students.” Since classroom libraries are now defined as part of the library media center, those books made available to students must be reviewed by a school district employee who has a valid media specialist certificate and who has taken the state training.

10. Has the state added any new prohibited materials for books in media centers or classroom libraries?

Answer: Yes. Previously, the state prohibited any book in a classroom library, which was ~~pornographic~~ pornographic, which was obscene or harmful to minors, is not suited to student needs or their ability to comprehend the material presented, or was inappropriate for the grade level and age group for which the material is used. Now, the state prohibits any book which depicts or describes sexual conduct as defined in §847.001(19), Fla. Stat., unless the material is required as part of the curriculum for a course in health education, a unit in health education courses dealing with the

prevention of child sexual abuse, exploitation and human trafficking, a unit in health education courses for students in grade 6-12 regarding the awareness of the benefits of sexual abstinence as the expected standard and the consequences of teenage pregnancy. Sexual conduct is defined as follows: “actual or simulated sexual intercourse, deviate sexual intercourse, sexual bestiality, masturbation, or sadomasochistic abuse; actual or simulated lewd exhibition of the genitals; actual physical contact with a person’s clothed or unclothed genitals, pubic area, buttocks, or, if such person is a female, breast with the intent to arouse or gratify the sexual desire of either party; or any act or conduct which constitutes sexual battery or simulates that sexual battery is being or will be committed.”

11. A student is asking to form the Gay-Straight Alliance. Is this allowed?

Answer: Yes. If a middle or high school allows clubs, it has to allow a Gay Straight Alliance under the Federal Equal Access Act. See Carver Middle School Gay-Straight Alliance v. School Board of Lake County, Florida, 842 F.3d 1324 (11th Cir. 2016): “We conclude that ‘secondary education,’ under Florida law, means at least “courses through which a person receives high school credit that leads to the award of a high school diploma.” *Id.* § 1004.02(4). Carver Middle School provides courses through which students can obtain high school credit. The Equal Access Act applies to Carver Middle School. The State of Florida, in response to a lawsuit regarding the Parental Rights in Education Act states as follows: “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.”

12. Can I have a rainbow sticker in my classroom or wear a rainbow lanyard?

Answer: Yes. 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 in its Motion to Dismiss the lawsuit seeking to invalidate House Bill 1557.