

# KNOW YOUR RIGHTS



**#TEACHTRUTH**

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## Know Your Rights

# WHAT EDUCATORS SHOULD KNOW ABOUT SOUTH DAKOTA'S "DIVISIVE CONCEPTS" LAW

Lawmakers and policy makers across our country, in yet another attempt to divide Americans along partisan and racial lines, are pushing legislation that seeks to stifle discussions in public schools that celebrate our country's greatest triumphs and examine our darkest moments, attempting to restrict students' freedom to learn from the past and make a better future. These legislators are working hard to censor classroom discussions on topics like race, racism, sex, sexism or inequity.

Despite the rhetoric around them, these proposed or enacted laws do not prohibit teaching the full sweep of U.S. history, including teaching about nearly 250 years of chattel slavery, the Civil War, the Reconstruction period, or the violent white supremacy that brought Reconstruction to an end and has persisted in one or another form ever since. Nor should most of these laws and policies undermine efforts to ensure that all students, including historically marginalized students, feel seen in the classroom and benefit from culturally responsive and racially inclusive curricula and pedagogical tools that teach the truth about our country and prepare students to meet the demands of a changing and increasingly globalized world.

In South Dakota, those efforts have resulted in an Executive Order by Governor Kristi Noem and new law, entitled "[a]n Act to protect students and employees at institutions of higher education from divisive concepts," which amends the state's Education Code.

The Executive Order applies to K-12 schools. By contrast, the new law does not concern K-12 schools in any way. Nor should the new law impede teaching truth in the higher education setting, as it targets only narrow "divisive concepts" and explicitly protects course content and academic freedom.

If you or a colleague feel your ability to teach the truth is stifled by how your school district, college or university is interpreting or enforcing the Executive order or new law, you can take action. Remember that you are most protected when you speak out outside of work, at a Board of Trustees, Regents, or school board meeting, in your church or other local community group. If you are represented by the [South Dakota Education Association](#), reach out to your local representative for assistance. You can also find additional help at the resources linked below.

The following answers some FAQs about the new law.

*These dangerous attempts to stoke fears and rewrite history not only diminish the injustices experienced by generations of Americans, they prevent educators from challenging our students to achieve a more equitable future.*

**- BECKY PRINGLE, PRESIDENT OF THE NATIONAL EDUCATION ASSOCIATION**

## Q&A

### What is this Executive Order and what does it do?

- o Executive Order 2022-02 was signed by Governor Kristi Noem on April 5, 2022. The full text of the Executive Order can be found [here](#).
- o The Executive Order:
  - Directs the Department of Education to review all [South Dakota Content Standards](#) to identify if any “inherently divisive concepts” are included and remove such standards through the content standards revision process.
  - Prohibits the Department of Education from directing or compelling department employees, or K-12 students, teachers, or school district employees to personally affirm, adopt, or adhere to “inherently divisive concepts.”
  - Directs the Department of Education to end or remove all policies, guidelines, web-

sites, best practices, materials, trainings, or other professional development services that promote or endorse “inherently divisive concepts” or “direct or compel students or educators to personally affirm, adopt, or adhere to inherently divisive concepts.”

- Requires the Secretary of Education to report their findings to the Office of the Governor, along with any administrative or legislative action needed to “end the use of all inherently divisive concepts in public education.”
- o The Executive Order defines “inherently divisive concepts” as advancing any ideas that violate the Civil Rights Act of 1964, including but not limited to the concepts that:
  - Any race, color, religion, sex, ethnicity, or national origin is inherently superior or inferior;
  - An individual should be discriminated against or adversely

treated because of their race, color, religion, sex, ethnicity, or national origin;

- An individual’s moral character is inherently determined by their race, color, religion, sex, ethnicity, or national origin;
- An individual, by virtue of their race, color, religion, sex, ethnicity, or national origin is inherently racist, sexist, or oppressive, whether consciously or subconsciously;
- Individuals, by virtue of race, color, religion, sex, ethnicity, or national origin, are inherently responsible for actions committed in the past by other members of the same race, color, religion, sex, ethnicity, or national origin; and
- Meritocracy or traits such as a strong work ethic are racist or sexist or were created by members of a particular race or sex to oppress members of another race or sex.



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- o Recently, the Board of Education has [proposed changes](#) to the state’s [Social Studies Content Standards](#). The standards review process involves a series of four public hearings, hosted by the Board of Education, at four locations across the state over a period of at least six months. The first hearing was held in September 2022.
  - o During this review period, written comments can also be submitted to the Board of Education [here](#). More information about the proposed changes to the Social Studies Content Standards can be found [here](#).
- What is this new law and what does it do?**
- o South Dakota’s “divisive concepts” Act was codified into law on July 1, 2022.
  - o The law adds new sections to South Dakota’s Education Code. See SDCL §§ 13-1-67 to 13-1-71. The full text can be found [here](#).
  - o The law prohibits colleges and universities from:
    - Requiring students to affirm, adopt, or adhere to divisive concepts;
    - Requiring students or employees to attend a training or orientation that teaches, advocates, acts upon, or promotes divisive concepts;
    - Conditioning enrollment or attendance in a class, training, or orientation on the basis of race or color; or
    - Authorizing or expending funding for purposes prohibited by this law.
  - o According to the law, the term “divisive concepts” includes the concepts listed in the Governor’s Executive Order as well as the concept that:
    - An individual should feel discomfort, guilt, anguish, or any other form of psychological distress on account of the individual’s race, color, religion, ethnicity, or national origin; or
  - o The law has no effect on course content or teaching on most South Dakota campuses, as “[n]othing in this Act . . . [p]ertains to the content or conduct of any course of academic instruction or unit of study at an institution of higher education under the control of the Board of Regents or the Board of Technical Education.”
  - o The law specifically protects the First Amendment rights of students and employees, specifically noting the duty of South Dakota institutions of higher education to “protect, to the greatest degree, academic freedom, intellectual diversity, and free expression.”
  - o Despite the narrow reach of its plain language, the law could still chill the free exchange of ideas in higher education. The law attempts to censor educators at colleges and universities by vaguely forbidding certain ideas. This vague language opens the door for a wide range of interpretations that could be used to chill free speech and academic freedom, by discouraging open and honest discussions about our country’s history in lecture halls, classrooms, and other academic spaces.
- Can I still teach the truth about U.S. history and current American society?**
- o **K-12 educators:** Yes!
    - The Executive Order is directed at K-12 schools. **By contrast, nothing in the new law concerns K-12 teaching or curricula.**
    - The new law does not alter the state’s [Social Studies Content Standards](#) for grades K-12, which require educators to



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teach students about U.S. and world history, civics/government, geography, and economics based on the students' grade level.

- Until the Board of Education implements changes to the state's [Social Studies Content Standards](#), classroom lessons aligned with these curriculum standards remain defensible.

- o **Higher Education educators:**

Unless the Board of Regents or the Board of Technical Education takes action, the new law changes nothing about the content or conduct of any course of study at an institution under the control of those Boards.

- Under the new law, colleges and universities are not restricted in the courses they are allowed to offer or the content of such courses, but professors cannot “compel” students to “affirm, adopt, or adhere” to a view that the law defines as a “divisive concept.”

- o As always, you should never teach that any race or sex is inherently superior or inferior to another race or sex, or that individuals should be treated badly on the basis of their race or sex.

## What if my students ask about current events that raise issues of structural or systemic racism?

- o As an educator, you know how to handle challenging questions in professional and age-appropriate ways.
- o **K-12 educators:** If you are planning a classroom lesson about a current event or controversial topic that also involves discussion of race, racism, or racial discrimination, you may consider notifying or getting approval from your school principal or administrator. If approval is denied, consult your union representative about the best way to proceed. If you are represented by the South Dakota Education Association, you can find your local union's contact information on SDEA's [website](#).
- o **Higher Education educators:** As noted above, this law has no effect on course content or teaching on most South Dakota higher education campuses. Professors and instructors may discuss current events or controversial topics, including race, racism, and structural and systemic discrimination, as long as students are not compelled to “affirm, adopt,

or adhere” to a view that the law defines as a “divisive concept.”

## What if there is a racial incident or an incident motivated by racism at school or on campus?

- o Neither the Executive Order nor the new law relieves K-12 school districts, colleges or universities of their obligations under federal and state law to enforce anti-bullying, anti-harassment, and non-discrimination policies in schools.
- o **K-12 educators:** Your school district likely has a policy in place to address these types of incidents. Provided you are responding to the incident in a way that is in line with that policy, your conduct should be protected.
- o **Higher Education educators:** Many colleges and universities also have anti-bias, anti-bullying and anti-harassment policies. Current policies can typically be obtained from the campus police department, student life dean, college/university president, or board of trustees. Provided you are responding to the incident in a way that is in line with those policies, your conduct should be protected.



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## How can I continue to foster an inclusive environment at my school, college or university? / Can I display a Black Lives Matter flag, etc. in my classroom, lecture hall or office?

- o We know that culturally responsive and racially inclusive curriculum and pedagogical approaches work, both at the K-12 and higher education levels. They engage students and improve student retention and achievement. Talk to your school principal, administrator, chairperson, department head, or dean about the importance of making sure all students feel seen and supported at your school, and the ways your school can make sure this happens.
- o **K-12 educators:** If you plan on posting a symbol of inclusion, such as a Black Lives Matter, LGBTQIA+ Pride, or DREAMers flag or poster, and have not seen other educators posting similar items in their classroom, make sure to tell your school principal or administrator in advance so you can address any concerns they may have. If your school principal or another school ad-

ministrator bars you from posting such inclusive signage, consult your union representative about how best to proceed.

- o **Higher Education educators:** As noted above, the new law specifically protects the First Amendment rights of students and employees, including academic freedom, intellectual diversity, and free expression. However, you may consider talking with your chairperson, department head, or dean before posting a symbol of inclusion, such as a Black Lives Matter, LGBTQIA+ Pride, or DREAMers flag or poster. If your chairperson, department head, or dean bars you from posting such inclusive signage, consult your union representative about how best to proceed.

## How can I support my students / oppose this law outside of school?

- o You can join your students at these off school events, but you should not use your authority as their teacher to urge students to participate.

## How can I get more involved in opposing these laws?

- o [Sign the NEA EdJustice Honesty in Education pledge](#) to show your support for teaching the truth and stay up to date on the education justice movement.

## Where can I go for more information on this issue?

- o [NEA's Honesty in Education resource page](#) and [NEA's Know Your Rights page](#)
- o [African American Policy Forum #TruthBeTold Campaign Partnership for the Future of Learning's messaging guide: Truth in Our Classrooms Bridges Divides](#)
- o [The Leadership Conference's Toolkit for Local Advocates: Teaching Diverse and Inclusive Curricula Materials and Defending Diversity, Equity, and Inclusion](#)



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