

# KNOW YOUR RIGHTS



Indiana  
State  
Teachers  
Association



**#TEACHTRUTH**

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## Know Your Rights

# WHAT EDUCATORS SHOULD KNOW ABOUT INDIANA'S NEW ANTI-LGBTQ+ LAW

In yet another attempt to divide Americans along social and racial lines, lawmakers and policymakers across the country are pushing legislation that seeks to censor classroom discussions on topics like inequity, racism, sexism, sexual orientation, and gender identity. Such censorship stifles students' freedom to learn and be their authentic selves.

Despite the rhetoric around them, these laws do not prohibit teaching the full sweep of U.S. history and acknowledging the contributions and experiences of LGBTQ+ people. In line with state standards, you may still teach about the history of discrimination and violence toward LGBTQ+ people, including about federal laws, such as “Don't Ask, Don't Tell” and the Defense of Marriage Act, that excluded LGBTQ+ individuals from defending and enjoying the freedoms and liberties that define our country. Nor should these recent laws undermine efforts to ensure that all students, including those from historically marginalized populations, feel seen and respected in the classroom. All students deserve to benefit from culturally responsive and 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 Indiana, those divisive efforts resulted in the enactment of House Bill 1608 (2023). The following guide answers key questions about HB 1608 and provides links to additional resources.

*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 does Indiana's new law do?

- o House Bill 1608 went into effect on July 1, 2023. It prohibits human sexuality instruction in pre-kindergarten through third grade and requires parent notification of student name or pronoun changes. The full text of HB 1608 can be found [here](#).

### What does HB 1608's anti-LGBTQ+ curriculum provision do?

- o HB 1608 declares that schools, their employees and staff members, and third-party vendors used by schools “may not provide any instruction to a student in pre-kindergarten through grade 3 on human sexuality.”
  - Unfortunately, the law is quite vague and does not define “instruction” or “human sexuality.”

- o However, HB 1608 does include two exceptions to this ban on human sexuality instruction:
  - HB 1608 does not “prohibit a teacher from providing instruction on academic standards developed by” the Indiana Department of Education or otherwise required by law.
  - Nor does it “prevent a school employee or a school staff member from responding to a question from a student regarding” human sexuality.

### What does HB 1608's name and pronoun requirement do?

- o HB 1608 requires schools to “notify in writing at least one parent” of an unemancipated minor student if “a request is made by the student to change” the student's name, pronoun, title, or word used to identify them.

- Notification to the parent must occur “[n]ot later than five business days after the date on which a school receives” the request from the student.
- o But HB 1608 does not require parental consent before school employees may address a student by that student's appropriate name or pronouns. HB 1608 also does not displace obligations that school psychologists, school nurses, school social workers, and school counselors may have under federal law, nor does it excuse a school or district from complying with federal civil rights laws protecting students.

### Can I still teach the truth about LGBTQ+ history and current American society?

- o Yes. If you teach fourth grade or above, you are not subject to HB



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1608 and face no new restrictions. If you teach third grade or below, you can continue to teach about LGBTQ+ history in accordance with state standards.

- o HB 1608 expressly reaffirms that instruction aligned with the Indiana Academic Standards or otherwise required by law is permitted. For example, under Grade 3 Standard 3.C.5, which requires students to “[e]xplain the role citizens have in making decisions and rules within the community, state, and nation,” you may facilitate a third-grade discussion on the role and impact of LGBTQ+ civil rights advocates.
- o HB 1608 also expressly allows school personnel to “respond[] to a question from a student regarding” human sexuality. For example, during a lesson on how to use “a variety of resources to gather information about your region’s communities” under Grade 3 Standard 3.H.6, you may answer student questions about the local LGBTQ+ community. Just be careful not to stray from the question. Expansive respons-

es may be treated as unrelated “instruction.”

- o However, because HB 1608 does not define “instruction” or “human sexuality,” and the state standards are open to interpretation, questions remain about how the law will be enforced. In *Smiley v. Jenner*, a recent legal challenge to HB 1608, the court indicated that “formal teaching on sex education or sexually transmitted diseases” would violate HB 1608, and certainly is not provided in any event at the K-3 grades levels.
- o Pay careful attention to the training you receive from your school and district, documenting their interpretation of HB 1608. Consider speaking with your principal or administrator before introducing material that may be controversial.
- o And don’t forget that if the curriculum provision is implemented in a way that discriminates based on gender identity or sexual orientation – for example, if information related to heterosexual

relationships is allowed but not information related to same-sex relationships – your school may be in violation of the Fourteenth Amendment’s Equal Protection Clause or Title IX of the Education Amendments of 1972 (“Title IX”).

## **What if my students ask about current events that raise issues of sexism, sexual orientation, or gender identity?**

- o You can always respond to a student question in the professional, age-appropriate ways you know best as an educator. Just be careful not to stray from the question. Expansive answers may be treated as unrelated “instruction.”
- o For example, if, during a lesson on “the duties of and selection process for local and state government officials” under Grade 3 Standard 3.C.2, a student asks you a question about a current lack of LGBTQ+ representation in government, you may answer and discuss relevant history.
- o If you are planning a classroom lesson about a current event or



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topic that may be controversial and is likely to prompt discussion of sexism, sexual orientation, or gender identity, be sure that your curriculum is aligned with Indiana Academic Standards. You may choose to notify your school principal or administrator in advance for additional guidance.

## What happens if a parent or guardian files a complaint accusing me of assigning objectionable materials?

- o HB 1608 does not outline a process through which parents can formally complain, nor does it provide parents with a private right of action that allows them to sue individual educators.
- o However, parental accusations that you have violated this law could trigger disciplinary proceedings including a decision not to renew your contract. Teachers without tenure protections should be particularly careful.
- o If a complaint is filed against you, and you are a member of the Indiana State Teachers Association (ISTA), you should contact your

local representative to discuss your rights. ISTA contact information can be found [here](#).

## What if a student asks me to use a pronoun that does not conform to their biological sex?

- o You may refer to a student by the name, pronouns, or title that they request. HB 1608 only requires notification to parents. It does not require parental consent before school employees may address students by their appropriate name and pronouns. You may still support and affirm transgender and gender non-conforming students.
- o But be careful to follow any procedures your school establishes to fulfill its notification duty to parents. Failure to comply may subject you to disciplinary action.
- o Although the law does not contain any exception for where parental notification may put the student at risk of abuse or neglect, if you are concerned that it may put a student at risk or may compromise a student's well-being, be sure to alert your

administration about this concern in writing.

- o Finally, keep in mind that repeated misgendering of the student by others may constitute bullying or harassment, which raises difficult questions about conflicts between state law and federal anti-discrimination laws, particularly Title IX. Transgender, nonbinary and gender nonconforming students who are being harassed or discriminated against at school may file complaints with the U.S. Department of Education's Office of Civil Rights, as described [here](#).

## What if there is an incident motivated by anti-LGBTQ+ hate in the school?

- o School districts have obligations under federal and state law to enforce anti-bullying, anti-harassment, and nondiscrimination policies in schools. 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.



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- o LGBTQ+ students and educators who are harassed or discriminated against at school may file complaints with the U.S. Department of Education's Office of Civil Rights, as described [here](#).

## How can I continue to foster an inclusive environment at my school?

- o We know that culturally responsive and inclusive curriculum and pedagogical approaches work. They engage students and improve student retention and achievement. Talk to your school principal or administrator about the importance of making sure all students feel seen and supported in your classroom and school, and the ways your school can make sure this happens.
- o HB 1608 cannot stop you from supporting and including LGBTQ+ students. However, if you work with students in prekindergarten through grade 3, make sure that any human sexuality "instruction" fits squarely within existing state academic standards or is limited to responding to unprompted student questions.

- o If you plan on posting a symbol of inclusion, such as a LGBTQ+ Pride flag, 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 administrator bars you from posting such inclusive signage, consult your local Indiana State Teachers Association (ISTA) representative about how best to proceed. Their contact information can be found [here](#).

## How can I support my students / oppose these laws outside of school?

- o Always remember that you have the greatest protection when you speak up during non-work time and outside of school – for example, by speaking at a school board meeting, church, or other local community group meeting; attending a rally; writing a letter to the editor; or posting on Facebook or other social media.
- o You can join your students at these out-of-school events, but

you should not use your authority as their teacher to urge students to participate.

- o Sign the NEA EdJustice [Stand Against Hate and Bias pledge](#) to show your support for LGBTQ+ students and educators and stay up to date on the education justice movement.

## Where can I go for more information on these issues?

- o NEA's [Honesty in Education page](#) and [Know Your Rights page](#)
- o NEA's [What Educators Should Know About LGBTQ+ Rights](#)
- o [NEA EdJustice's Supporting LGBTQ+ Youth page](#)
- o [NEA's Educator Advocacy Guide](#)
- o [Human Rights Campaign's Welcoming Schools Website](#)





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