

# KNOW YOUR RIGHTS



#TEACHTRUTH

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## WHAT EDUCATORS SHOULD KNOW ABOUT KENTUCKY'S NEW STATE LAWS

In yet another attempt to divide Americans along partisan and racial lines, lawmakers and policy makers across our 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 from the past, to discuss ways of making a better future, to examine our country's darkest moments, and to celebrate its greatest triumphs.

Despite the rhetoric around them, these laws do not prohibit teaching the full sweep of U.S. history. You may still teach about our country's 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. In line with state standards, you may also still teach about the history of discrimination and violence toward LGBTQ+ people, including about federal laws like "Don't Ask, Don't Tell" and the Defense of Marriage Act that excluded LGBTQ+ individuals from defending and benefiting from the freedoms and liberties that define our country. Nor should these laws undermine efforts to ensure that all students, including those from historically marginalized populations, feel seen 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 Kentucky, these divisive efforts resulted in the enactment of **Senate Bill 1 (2022)**, **Senate Bill 5 (2023)**, and **Senate Bill 150 (2023)**. Together, these laws prescribe new limits for social studies curriculum and significantly restrict instruction and student accommodations related to sexual orientation and gender identity. The following guide answers key questions about these laws 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 Kentucky’s new social studies curriculum law do?

- o Senate Bill 1 (SB 1) went into effect on July 14, 2022. It gave each district’s superintendent authority to select a school’s curriculum and created new requirements for teaching social studies and current events. The full text of SB 1 can be found [here](#).
- 4 o The law provides that the superintendent of each district, instead of the school council, determines the curriculum after consulting with the local board of education, principal, and school council and after a stakeholder review and response period.
- o The law requires that all social studies instruction align with the following concepts:
  - “All individuals are created equally”;
  - “Americans are entitled to equal protection under the law”;
  - “An individual deserves to be treated on the basis of the individual’s character”;
  - “An individual, by virtue of the individual’s race or sex, does not

bear responsibility for actions committed by other members of the same race or sex”;

- “The understanding that the institution of slavery and post-Civil War laws enforcing racial segregation and discrimination were contrary to the fundamental American promise of life, liberty, and the pursuit of happiness, as expressed in the Declaration of Independence, but that defining racial disparities solely on the legacy of this institution is destructive to the unification of our nation”;
- “The future of America’s success is dependent upon cooperation among all its citizens”;
- “Personal agency and the understanding that, regardless of one’s circumstances, an American has the ability to succeed when he or she is given sufficient opportunity and is committed to seizing that opportunity through hard work, pursuit of education, and good citizenship,” and
- “The significant value of the American principles of equality,

freedom, inalienable rights, respect for individual rights, liberty, and the consent of the governed.”

- o The law also requires that instruction on current events or controversial topics related to public policy or social affairs be:
  - “Within the range of knowledge understanding, age, and maturity of the students receiving the instruction”;
  - “Relevant, objective, nondiscriminatory, and respectful to the differing perspectives of students.”
- o The law prohibits teachers or school employees “from requiring or incentivizing a student to advocate in a civic space on behalf of a perspective with which a parent or guardian of a minor student does not agree.”

### What does Kentucky’s new anti-LGBTQ+ curriculum and accommodations law do?

- o Senate Bill 150 (SB 150) went into effect on March 29, 2023. The full text of SB 150 can be found [here](#). The law restricts what can be taught about sexuality and gender identity



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and permits discrimination against LGBTQ+ students with respect to their appropriate pronouns and access to facilities that correspond to their gender identity.

- o The law prohibits:
  - “Instruction or presentation” for “any child, regardless of grade level,” that has “a goal or purpose of students studying or exploring gender identity, gender expression, or sexual orientation”; or
  - “any instruction through curriculum or programs on human sexuality or sexually transmitted diseases” for grades 5 and below.
  - And/or? Note that although many districts have interpreted the law in line with what some lawmakers say was meant to be a ban on both instruction on gender identity or sexual orientation and on any sex education curriculum up through 5th grade, the plain language of the law actually says “or” — which would give districts an option to choose between these bans. This interpretation is consistent with [legislative guidance from the Kentucky Board of Education](#), confirming that districts may choose which prohibition to implement. Educators should clarify with their principal which prohibition(s) their district has implemented.
- o The law requires two weeks advance parental notification and written consent before providing instruction on “human sexuality or sexually transmitted diseases” in grades six and above. In addition, the curriculum used must be “developmentally appropriate” and “subject to an inspection by parents of participating students.” Children whose parents do not consent must be provided “an alternative course, curriculum, or program without any penalty to the student’s grade or standing for students whose parents have not provided written consent.”
- o Despite these restrictions, educators may:
  - discuss “human sexuality, including the sexuality of any historic person, group, or public figure, where the discussion provides necessary context in relation to a topic of instruction” from an approved curriculum; and
  - respond to student questions “during class regarding human sexuality as it relates to a topic of instruction” from an approved curriculum.
- o The law prohibits schools from adopting policies that “require school personnel or students to use pronouns for students that do not conform to that particular student’s biological sex.”
- The law does not prohibit individuals (either students or educators) from requesting or honoring an individual’s pronouns.
- But the Kentucky Board of Education and the Kentucky Department of Education may not require or recommend the use of pronouns that do not conform to a student’s biological sex as reflected on their original birth certificate.
- o The law strictly limits bathroom and locker room access for transgender students:
  - Schools cannot “allow students to use restrooms, locker rooms, or shower rooms that are reserved for students of a different biological sex” or require students to “undress or be unclothed in the presence of members of the opposite biological sex.”
  - If a student “asserts to school officials that his or her gender is different from his or her biological sex,” and the student’s “parent or legal guardian provides written consent,” the student will be provided with the “best available accommodation,” such as “access to single-stall restrooms or controlled use of faculty bathrooms, locker rooms, or shower rooms.” But transgender students will still be denied access to facilities consistent with their gender identity.





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o The law also requires school districts and “district personnel” to “respect the rights of parents to make decisions regarding the upbringing and control” of their children and to encourage “students to discuss mental or physical health or life issues with their parents.” The law also:

- prohibits keeping “any student information confidential” from a student’s parents, such as information learned in confidence about a student’s sexuality or gender identity—unless a “reasonably prudent person would believe, based on previous conduct and history,” that revealing the information would result in the child being physically or emotionally or sexually “abused or neglected”; and
- requires schools to provide advance notice to parents and an opportunity to withhold consent to:
  - any physical or mental health services related to “human sexuality, contraception, or family planning”; or
  - any “well-being questionnaire or assessment, or a health screening form being given to a child for research purposes.”

## What does Kentucky’s new LGBTQ+ censorship law do?

- o Senate Bill 5 (SB 5) went into effect on March 29, 2023. It gives parents and guardians broad rights to challenge certain school materials, programs and events as “harmful,” places tight time limitations on schools to respond to such challenges, and requires public proceedings before school boards on such removal requests. The full text of SB 5 can be found [here](#).
- o The law grants parents and guardians the right to file complaints about “materials, programs, or events” that are “harmful to minors” because they:
  - “contain the exposure, in an obscene manner, of the unclothed or apparently unclothed human male or female genitals, pubic area, or buttocks or the female breast, or visual depictions of sexual acts or simulations of sexual acts, or explicit written descriptions of sexual acts;”
  - “taken as a whole, appeal to the prurient interest in sex;” or
  - are “patently offensive to prevailing standards regarding what is suitable for minors.”
- o The law also requires local boards of education to develop and implement

policies for the resolution of parental complaints. Under the required policies:

- A parent or guardian can submit a written complaint to a school’s principal that identifies the “material, program, or event that is alleged to be harmful to minors, and how the material, program, or event is believed to be harmful to minors.”
- The school principal must review the complaint and conduct an investigation within seven (7) business days and must tell the parent or guardian within ten (10) business days whether the challenged material “was determined to be harmful to minors and what the resolution will be.”
- If the complaining parent or guardian is dissatisfied with the school principal’s resolution, they may appeal to the local board of education. The appeal must then be heard by the local school board within thirty (30) days. In that appeal:
  - the complaining parent or guardian must be allowed to “provide input during public comment” at a board’s meeting;



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- the appeal must be “discussed and voted on” during a board meeting that is “subject to the open records and open meeting requirements” of state law; and
- information concerning the board’s decision in the appeal—including the vote cast by each individual board member—must be published on the board’s website and in the “newspaper with the highest circulation in the county.”
- Regardless of the outcome of an appeal, the complaining parent or guardian may request that their “student does not have access to the material, program, or event that the parent or guardian believes to be harmful to minors but was allowed to remain or be eligible for future participation.”

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

- o Generally, yes.
- o SB 1 expressly reaffirms that instruction and instructional materials aligned with the Kentucky Academic Standards (KAS) for Social Studies are permitted. Those standards require educators to teach students about American and world history, civil rights, government, economics,

and geography, based on the students’ grade level.

- The law also provides a list of specific documents that must be incorporated in curriculum standards like the What to the Slave is the Fourth of July? speech by Frederick Douglass, Dred Scott v. Sandford, and Declaration of Rights of the Women of the United States by Susan B. Anthony, Matilda Joslyn Gage, and Elizabeth Cady Stanton.
- The law does not prohibit classroom lessons on the contributions of women, gender inequality, the women’s suffrage movement, and the struggle for equality and civil rights for women.
- o SB 150 prohibits “any instruction or presentation that has a goal or purpose of students studying or exploring gender identity, gender expression, or sexual orientation.” SB 150 also prohibits “any instruction... on human sexuality” to children in grade five and below.
  - But, SB 150 does not prohibit discussions of “human sexuality, including the sexuality of any historic person, group, or public figure, where the discussion provides necessary context in relation

to a topic of instruction” from an approved curriculum. For example, SB 150 does not prohibit a discussion of Kentucky’s statutory and constitutional bans on same-sex marriage that were overturned by the U.S. Supreme Court’s ruling on same-sex marriage in Obergefell v. Hodges under High School Standard HS.UH.KH.1, which covers how Kentuckians influence and are influenced by major national developments.

- SB 150 also does not prohibit school personnel from “[r]esponding to a question from a student during class regarding human sexuality as it relates to a topic of instruction from a curriculum.” For example, you may respond to questions about homosexuality in ancient Greece and Rome, if any arise, during lessons on the “influences of Classical Greece and Rome on the structures of Kentucky’s state government” under Grade 6 Standard 6.H.KH.1.
- When discussing these topics, remember to keep instruction within the bounds of the Kentucky Academic Standards to avoid violating SB 150.



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

- o As an educator, you know how to handle challenging questions in professional and age-appropriate ways. You may consider notifying or getting approval from your school principal or administrator if a particular instructional approach is likely to be controversial in your classroom or the community.
- o If you are planning a classroom lesson about a current event or controversial topic that also involves discussion of racism or sexism, be sure your curriculum is age-appropriate and aligned with the Kentucky Academic Standards (KAS) for Social Studies.
- o You may answer questions about sexual orientation or gender identity, as long as your response does not have “a goal or purpose of students studying or exploring gender identity, gender expression, or sexual orientation.” For example, if a student asks why other provisions of SB 150 prohibit medical personnel from providing gender-affirming care for minors, you may explain the facts of what gender-affirming care is and the reasons that the legislature claimed it

should be prohibited when it passed the law, as well as facts regarding challenges to the law.

## Can I still assign books and materials that contain mentions of sexual orientation, gender identity, and sexual acts?

- o Yes, however, such books and materials may not be used for the “goal or purpose of students studying or exploring gender identity, gender expression, or sexual orientation” under SB 150.
- o In addition, these books and materials will be subject to complaints filed by parents and guardians and may be prohibited by your school principal or local board of education under SB 5 if they are considered “harmful to minors.”
- o Any materials that contain “visual depictions of sexual acts or simulations of sexual acts, or explicit written descriptions of sexual acts” are “harmful to minors” under the definition of SB 5 and are subject to complaint and may be prohibited. SB 5 also characterizes as “harmful to minors” any materials that “appeal to the prurient interest in sex” or are “patently offensive to prevailing standards regarding what is suitable

for minors”; these materials may be prohibited. Materials that contain explicit descriptions or depictions of sexual acts are almost certainly prohibited under the law and should not be assigned. It is much less clear, however, what could be considered “patently offensive to prevailing standards” of “what is suitable for minors,” as this is highly subjective. If you are unsure about whether a book or other materials may be considered offensive, check with your administration before assigning it.

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

- o The complaint will be filed with your school principal or with the Office of Education Accountability (OEA).
- o If the complaint is filed directly with your school, the principal will investigate the complaint, likely by reviewing the materials and interviewing you about how the materials are used in your instruction, and then determine whether the materials are “harmful to minors.” Your school principal will also determine whether the materials may remain available to students. “





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- o The complaining parent or guardian may appeal your school principal's decision to the local board of education. The board will review the complaint and the decision during a public meeting. The board will resolve the complaint with a vote. The board's decision and each member's vote will be published online and in a local newspaper.
- o The complaining parent or guardian may request that their student does not have access to the material, even if the school principal and/or the local board determines that it is not "harmful" and/or allows it to remain available to other students.
- o If a complaint is filed against you, and you are represented by a union, contact your union for assistance. You can find your local union's contact information on the Kentucky Education Association website. Your union representative can assist you in determining what rights you have.
- o SB 5 does not create a private right of action for parents against educators. However, a complaint to the Kentucky Department of Education or the Kentucky Education Professional Standards Board may prompt an investigation and/or disciplinary action against you for failure to comply with state law.

## **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 pronouns and names they request. SB 150 only prohibits your school district from requiring you, other personnel, and other students from using a student's pronouns if they do not correspond with their biological sex. However, 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](#).
- o Under SB 150, you may need to encourage a student who comes out as transgender or nonbinary "to discuss mental or physical health or life issues with their parents" or facilitate the discussion with their parents. However, you do not need to encourage or facilitate such discussion if "a reasonably prudent person would believe, based on previous conduct and history" that it "would result in

the child becoming a dependent child or an abused or neglected child."

- o SB 150 does not create a private right of action for parents against educators for violating this provision. However, a complaint to the school district or Kentucky Department of Education may prompt an investigation and/or disciplinary action against you for failure to comply with state law.
- o If your district or the Kentucky Education Professional Standards Board takes action against you for an alleged violation of the law, and you are represented by a union, contact your union for assistance. You can find your local union's contact information on the Kentucky Education Association website. Your union representative can assist you in determining what rights you have.

## **What happens if a parent, student, administrator or member of the community accuses me of violating these laws?**

- o None of the new laws create a private right of action for parents against educators, meaning a parent may not file a lawsuit against you for violating one of these laws. However, a complaint to the school district, Kentucky Department of Education, the Office of Education Accountability, or the



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Education Professional Standards Board of Kentucky may prompt an investigation and/or disciplinary action against you for failure to comply with state law.

- o If any of these agencies takes action against you for an alleged violation of the law, and you are represented by a union, contact your union for assistance. You can find your local union's contact information on the [Kentucky Education Association website](#). Your union representative can assist you in determining what rights you have.

## 10 What if there is an incident motivated by racism or LGBTQ+ hate in the school?

- o As the KDE has acknowledged, nothing in SB 1, SB 5, or SB 150 laws relieves school districts of their 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.

## 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 SB 150 cannot stop you from supporting and including LGBTQ+ students. However, you may need to encourage students “to discuss mental or physical health or life issues with their parents” or facilitate the discussion with their parents. You do not need to encourage or facilitate such discussion if “a reasonably prudent person would believe, based on previous conduct and history” that it “would result in the child becoming a dependent child or an abused or neglected child.”

- o However, SB 150 prohibits allowing “students to use restrooms, locker rooms, or shower rooms that are reserved for students of a different biological sex.” Some transgender and intersex students will need accommodations, including access to private restrooms and facilities. Even with these accommodations, these students’ exclusion from facilities that correspond with their gender identity may make them feel isolated and excluded. Talk to your school principal or administrator about how the school can attempt to address any such negative impacts.
- o If you plan on posting a symbol of inclusion, such as a Black Lives Matter poster or 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 union representative about how best to proceed.



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

- o Always remember that you have the greatest protection when you speak up about public issues like these 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. Keep in mind that personal workplace complaints are not afforded the same protections. If you are unsure about whether your comments are likely to be considered protected speech, consult your union representative.
- 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 Honesty in Education pledge to show your support for teaching the truth and 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 this issue?

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



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