



Alachua County
Public Schools

LGBTQ+
Support Guide

Alachua County Public Schools

LGBTQ+ Support Guide

TABLE OF CONTENTS

- 1. Background and Rationale**
 - Mission Statement
 - Executive Summary
- 2. Guide Implementation**
- 3. Actions to Ensure the Safety and Well-being of LGBTQ+ Youth**
 - Student Privacy
 - Names and Pronouns
 - Classroom Instruction
 - Field Trips
 - Restrooms/Locker Rooms
 - Dress Code
 - Gay/Straight Alliances
 - Athletics
- 4. Statistics and Data**
- 5. Anti-Discrimination Laws and Policies**
 - Local Policy: Alachua County School Board Policy
 - State Law: Florida Constitutional and Statutory Provisions
 - Federal Law: U.S. Constitutional and Statutory Provisions
- 6. Resources**
 - Resources for Faculty, Staff, Students, and Parents
 - Local Resources
 - Suicide-Prevention Resources
- 7. Settlement Agreement 3.11.24**

MISSION STATEMENT

The Alachua County Public School District is committed to the success of every student. This is only possible when all students feel safe and included in our schools. Statewide and national data make clear that LGBTQ+ students are disproportionately at risk for exclusion, bullying, harassment, self-harm, and absenteeism, each of which contributes to poor academic outcomes.

These devastating outcomes can be addressed by a school environment that fosters inclusion, values diversity, and protects the rights of *all* of its students, including its lesbian (L), gay (G), bisexual (B), transgender (T), questioning/queer (Q) and intersex and/or gender non-conforming students with a process that centers the role of the parent toward open communication toward their child.

EXECUTIVE SUMMARY

The *LGBTQ+ Support Guide* intends to improve the manner and consistency with which administrators implement existing federal, state, and local laws and policies concerning harassment and discrimination. Recognizing that LGBTQ+ students often face discrimination, stigmatization, bullying, and worse, this guide reflects the school district's compelling interest in ensuring that students have a productive and safe learning environment.

GUIDE IMPLEMENTATION

Schools and school leadership should use the Alachua County Public Schools "*LGBTQ+ Support Guide*" with a student-focused approach that includes parental notification and engagement when navigating the unique needs and concerns of LGBTQ+ youth. Change or modification in services for minors shall include parental consent. The use of this guide, along with the action items, will ensure that the experiences of students are equitable across schools and handled with consistency between administration, faculty, and staff.

Use of this guide should result in the creation of a school culture and classroom environment that values, respects, and supports the needs of *all* students. This guide will be used by all administrators, faculty, and staff within the District. Importantly, this guide also provides the parents of LGBTQ+ youth with a tool to ensure the safety and well-being of their children at school.

This guide is not intended, nor designed to be used in classroom instruction or as a part of any Pre-K to 12 curricula. Faculty and staff should always use professional judgment, with support from administration, when seeking age-appropriate resources, tools, or materials to be used in the classroom.

In this guide, the phrase School Board shall mean the School Board of Alachua County. It is important that anyone who is looking for support or has questions and concerns can ask for assistance.

Please contact:
Toni Griffin, Ed.D.
School Counseling Supervisor
Executive Director of ESE/Student Services
Exceptional Student Education/Student Services
Fearnside Family Services Center
3600 NE 15th Street
Gainesville, FL 32601
(352) 955-7676

STUDENT PRIVACY

All students' privacy rights will be respected. Personal information about a student, including their sexual orientation, gender identity, or gender expression, will not be shared without the parents' consent if the student is a minor. A student that is 18 years old may provide consent before disclosure.

The Family Educational Rights and Privacy Act (FERPA) is a federal law that protects the privacy of student educational records. The law applies to all schools that receive funds under applicable programs of the U.S. Department of Education. Schools must have written permission to release any information from a child's educational record.

FERPA allows certain disclosures without consent, such as when required by court order, a lawfully issued subpoena, to another school to which the student is transferring, to accrediting organizations, and to others listed in the Code of Federal Regulations at 34 CFR §99.31.

Many LGBTQ+ youth have supportive and affirming parents. However, some LGBTQ+ students may experience rejection from their family as the result of their sexual orientation, gender identity, or gender expression. For students who experience family rejection, it is imperative to provide support and resources to parents and families to help ensure they have the tools and resources to support their child. The goal of the district is always to ensure the safety and well-being of the student.

The simple knowledge of a student's sexual orientation and/or gender identity, without related concerns about the student's health, safety, or well-being, would not be considered a change in services or monitoring. For parents who have questions about their child being LGBTQ+ and have contacted the school district, faculty and staff must not intentionally withhold information about their child's identity unless a reasonably prudent person would believe that disclosure would result in abuse, abandonment, or neglect, as those terms are defined by the law. Students should be encouraged to speak with their parents about sensitive and personal information.

NAMES AND PRONOUNS FOR STUDENTS

The use of a preferred name, title, or pronoun may be honored by school staff and handled with consistency in accordance with the guidelines below.

Several new statutes were enacted or amended recently to address the issues of titles and pronouns for students in Florida. Any violation of the following statutes is considered a violation of the Principles of Professional Conduct for the Education Profession in Florida, and may result in a sanction against the educator's Florida Educator Certificate.

- “An employee, contractor, or student of a public K-12 educational institution may not be required, as a condition of employment or enrollment or participation in any program, to refer to another person using that person’s preferred personal title or pronouns if such personal title or pronouns do not correspond to that person’s sex.” Fla. Stat. §1000.071(2).
- “An employee or contractor of a public K-12 educational institution may not provide to a student his or her preferred personal title or pronouns if such preferred personal title or pronouns do not correspond to his or her sex.” Fla. Stat. §1000.071(3).
- “A student may not be asked by an employee or contractor of a public K-12 educational institution to provide his or her preferred personal title or pronouns or be penalized or subjected to adverse or discriminatory treatment for not providing his or her preferred personal title or pronouns. Fla. Stat. §1000.071(4).

However, there may be instances when a parent requests the use of a preferred name, title, or pronouns for their child. Alachua County Public Schools supports the fundamental right of parents to direct the upbringing of their children. If the parent provides written consent, an employee may use the student’s preferred personal title or pronouns, but is not required to do so.

Similarly, if parents have provided written consent, then the student information system will be updated to accurately reflect the student’s preferred name. Parents will be provided with a form through Skylert to submit to the District to list their student’s legal name and/or preferred name. Parents will be able to download, print, complete and submit it to the principal via email or turn in a hard copy to the principal. Teachers will be able to run class roster reports that will show all “AKA” names (e.g., preferred names) as well as all legal names.

Regardless of whether or not a court order for a legal name change has been provided, upon parent request, all non-official records, and verbal communications, should reflect the student's preferred name. Non-official records include such things as yearbooks, general rosters, substitute plans, seating charts, graduation rosters, bus seating charts, and newspapers/newsletters.

Although the preferred name will be added and reflected within a class roster, a student's legal name or gender marker cannot be changed on any legal documents, including state reporting and transcripts, without a court order. Upon receipt of a court order for a legal name change, an amended birth certificate, or amended state identification, legal documents will be updated to reflect the student's new legal name and gender marker.

For students who request the use of a preferred name, title, or pronouns, staff must inform the student that those requests must be provided by a parent, in writing.

One option for employees who feel uncomfortable using another individual's preferred pronouns would be to only use that individual's preferred name and no pronouns at all

CLASSROOM INSTRUCTION

Florida law prohibits intentional provision of classroom instruction on sexual orientation or gender identity except in specific circumstances.

The Florida Administrative Code establishes the following principles of professional conduct for Florida educators.

- An educator “shall not intentionally” provide “classroom instruction” to students in pre-Kindergarten through grade 8 on sexual orientation or gender identity except when required as part of a health education course.
 - The School Board does not provide any health education classroom instruction on sexual orientation or gender identity to children in grades K through 4.
 - In grades 5 through 8, health education courses on human growth and development are provided. Parents are given the opportunity to preview the coursework and to opt-out.
- An educator “shall not intentionally” provide “classroom instruction” to students in grades 9 through 12 on sexual orientation or gender identity except to comply with certain student performance standards or as part of a reproductive health course or health lesson for which a student’s parent has the option of having their student opt-out of the course.

Florida law does permit comprehensive age-appropriate and developmentally appropriate instruction for K-12 students on a variety of topics, including prevention of child sexual abuse, exploitation and human trafficking. Students in grades 7 through 12 may also receive instruction on teen dating violence and abuse. The administrative code also permits instruction in grades 6 through 12 on the benefits of sexual abstinence as the “expected standard” and the consequences of teenage pregnancy.

The prohibition applies to “classroom instruction.” The issue is what is considered classroom instruction. Faculty and staff should always use their professional judgment when addressing students’ questions or needs. Similarly, faculty and staff should always each out to the leadership at their school if there are any questions about the lessons or practices within their classroom.

The State of Florida has taken a position on the scope and meaning of the statute relating to classroom instruction on sexual orientation or gender identity. The State’s position can be found at in the Settlement Agreement dated 3/11/24 beginning on [page 20](#).

Based on the State's position, the following should not be considered to be classroom instruction:

- Grading or commenting on an assignment on a topic **chosen** by the student, such as an essay about the student having 2 mothers. The grade should be based on the organization of the essay, such as an introduction, the body of the essay, and the conclusion, as well as correct grammar and syntax. Any comment should be based on the organization and not the specific topic.
- Keeping a photograph of the teacher's family on the teacher's desk, or referring to their own spouse or family or children.
- Being the faculty advisor of a GSA (Gay Straight Alliance).
- Posting a "safe space" or rainbow sticker, or wearing a rainbow button, pin, etc.
- Intervening when a student is being harassed or bullied because they identify as LGBTQ+ or are perceived as being LGBTQ+
- Responding to students' discussing their families or family life in a non-judgmental manner, focusing on the content of what the child shares rather than the family structure.
- Incidental references in literature to a gay or transgender person or same sex couple.
- Books with LGBTQ+ main characters may be kept in a classroom library or social media center as long as the books are not required reading.

FIELD TRIPS

Field trips can be an integral part of the learning process in many areas of education. All students are guaranteed the right to be afforded an equal opportunity in all school-sponsored social and/or extracurricular activities when the student is otherwise qualified to participate. Reasonable accommodations must be made to allow all qualified students to attend and participate in a safe and equitable manner.

Field trips in Alachua County Public Schools are governed by SBAC Policy 2340 entitled District Sponsored Trips. A parent will be notified prior to any multiday field trip, whether room assignments for overnight lodging are or are not separated by biological sex at birth. District procedures for overnight lodging will include accommodations or modifications in order to ensure that all eligible students have the opportunity to participate in the field trip.

If students on a multiday field trip will not be separated by biological sex at birth, the impacted parent will be notified of the manner of separation. Schools have an obligation under FERPA to maintain the student's privacy and shall **not disclose** the student's transgender status to other students or other students' parents. This may require extra planning to ensure overnight lodging room assignments are approved by the parents. Every situation is unique and will be handled on a case-by-case basis.

RESTROOMS AND CHANGING FACILITIES

The School Board of Alachua County separates multi-user bathrooms, locker rooms, and dressing rooms according to the sex assigned at birth. However, the School Board also provides single-user unisex bathrooms and changing facilities.

The School Board of Alachua County separates multi-user bathrooms and changing facilities according to sex assigned at birth. However, the School Board also provides single-user, unisex bathrooms and changing facilities on each campus.

Single-user, unisex bathrooms and changing facilities are for any student requesting additional privacy, and do not require special permission to access them.

The Code of Student Conduct defines the disciplinary procedures that exist for students who enter the bathroom or changing facility that does not align with their sex assigned at birth, and refuse to leave when asked by school staff.

DRESS CODE

All students may dress in ways that are consistent with their ethnic heritage, religion, culture, and/or gender expression at any school sponsored event or function, while still abiding by the district's dress code policy, including dances and proms.

LGBTQ+ students have the right to express themselves through appearance and attire. Dress code policies should not be implemented or enforced such that they impact students in a discriminatory or disparate manner.

Transgender and gender non-conforming students have the right to dress in clothing that is consistent with their gender identity. Additionally, shirts with gay-friendly slogans, rainbows, or other messages supporting the LGBTQ+ community are permissible unless it is determined that the clothing creates a significant disruption in the learning environment.

In order for clothes to meet this standard of disruption, the disruption must be significant and objectively provable to other people. Clothing cannot be qualified as “significantly disruptive” simply because a teacher or administrator personally considers the message to be offensive.

GAY/STRAIGHT ALLIANCES

GSA (Gay-Straight Alliance or Gender-Sexuality Alliance) Student Clubs may be formed and must comply with Board Policy 2430.

Gay-Straight Alliances or Gender-Sexuality Alliances (GSAs) are student clubs allowing students with a common interest to get together and have events or discussions about that interest. GSAs are made up of students of any sexual orientation. Many GSA members are straight-identifying youth who are, or wish to be, "allies" to the LGBTQ+ community.

GLSEN is an organization of educators which is dedicated to creating an affirming learning environment for LGBTQ+ youth. Research from GLSEN indicates that the presence of a GSA within a school inherently makes the school a safer place for all students. This includes:

- There are lower levels of victimization related to sexual orientation and gender expression within the school;
- School personnel are more likely to intervene when hearing homophobic remarks;
- Students are less likely to feel unsafe because of their sexual orientation or gender identity; and
- There is a higher level of connectedness within the school.

Parents have the right to learn about the nature and purpose of clubs and activities offered at their minor child's school, including those that are extracurricular.

PARTICIPATION IN ATHLETICS

Fla. Stat. § 1006.205, determines how transgender students can participate in athletics at school.

Studies have demonstrated that, for all students, having the opportunity to participate in sports results in positive outcomes, including physical development, social skills, and psychological well-being. The psychological benefits of sports specifically include improved emotional regulation, decreased hopelessness and suicidal ideation, fewer depressive symptoms, and higher self-esteem.

Research has also found that participation in sports correlates to greater feelings of school belonging and pro-school behaviors, and, among LGBTQ+ students in particular, participation in athletics and extracurricular activities leads to higher GPAs and a greater sense of belonging at school.

In 2021, the Florida legislature enacted §1006.205(3)(a), Fla. Stat. The statute contains the following provisions:

- Athletic teams or sports designated for females, women, or girls may not be open to students of the male sex.” (§ 1006.205(3)(c)). Therefore, no transgender female students may participate in girls’ sports.
- Athletic teams or sports designated for males, men, or boys may be open to students of the female sex.” § 1006.205(3)(b), Fla. Stat. By this provision, transgender males may participate in athletic teams or sports designated for males, men or boys.

STATISTICS AND DATA

Youth Risk Behavior Survey:

The Youth Risk Behavior Survey (YRBS) is a statewide, school-based confidential survey of Florida's public high school students. This survey is conducted by the Florida Department of Education and the Florida Department of Health. The purpose of the YRBS is to monitor priority health-risk behaviors that contribute substantially to the leading causes of death, disability, and social problems among youth, which contribute to patterns in adulthood.

The data below is broken down for **Florida** students in **9th-12th grade**. In **2021**, according to the Youth Risk Behavior Survey, **24.9 %** of students identified as lesbian, gay, bisexual, or unsure of their sexual orientation, while **75.1 %** of students identified as heterosexual (i.e. "straight").

The Youth Risk Behavior Survey found that, in Florida, 1.7 % of students identify as transgender.

Family Acceptance Project:

Research from the Family Acceptance Project found more than 50 family accepting behaviors that help protect LGBTQ+ youth against health risks like depression, suicide, and illegal drug use, and that help increase self-esteem, health, and well-being.

LGBTQ+ young people who experienced high rates of accepting behaviors from their families, when compared with LGBTQ+ young people who experienced rejection from their families, were:

- More than 3 times LESS likely to attempt suicide;
- More than 3 times LESS likely to think about suicide;
- LESS likely to have substance abuse problems; and
- Had HIGHER self-esteem, BETTER family relationships, and STRONGER social support.

Note: The statistics provided above help to convey the importance of providing families with the tools to support and affirm their LGBTQ+ child.

ANTI-DISCRIMINATION LAWS AND POLICIES

A. Local Policies - Alachua County School Board

Alachua County Public Schools- School Board Policy (Section 5517: Anti-Harassment)

It is the policy of the Board to maintain an educational and work environment which is free from all forms of unlawful harassment, including sexual harassment. This commitment applies to all District operations, programs, and activities. All students, administrators, teachers, staff, and all other school personnel share responsibility for avoiding, discouraging, and reporting any form of unlawful harassment. This policy applies to unlawful conduct occurring on school property, or at another location if such conduct occurs during an activity sponsored by the Board.

The Superintendent will enforce the prohibition against discriminatory harassment on the basis of race, color, national origin, **sex (including sexual orientation, transgender status, or gender identity)**, physical and mental disability (including but not limited to: HIV, AIDS, or sickle cell trait), use of a language other than English by Limited English Proficiency (LEP) students, pregnancy, marital status, age (except as authorized by law), religion, military status, ancestry, or genetic information which are classes protected by State and/or Federal law (collectively, "protected classes") (hereinafter referred to as unlawful harassment), and encourages those within the School District community as well as third parties, who feel aggrieved to seek assistance to rectify such problems. The Superintendent will investigate all allegations of unlawful harassment and, in those cases where legally prohibited harassment is substantiated, the Superintendent will take immediate steps to end the harassment. Individuals who are found to have engaged in unlawful harassment will be subject to appropriate disciplinary action.

B. State Law: Florida Constitutional and Statutory Provisions

Florida Constitution, Article IX, Section 1 - Public Education:

*“The education of children is a fundamental value of the people of the State of Florida. It is, therefore, a paramount duty of the state to make adequate provision for the education of **all children** residing in its borders. Adequate provision shall be made by law for a uniform, efficient, **safe, secure, and high-quality education.**”*

Florida Constitution, Article I, Section 23 - Right of Privacy:

“Every natural person has the right to be let alone and free from government intrusion into the person’s private life.” This right applies with equal force to minors, who do not shed their constitutional rights at the schoolhouse gate.

Florida’s Anti-Discrimination Law, Section 1000.05, Florida Statutes:

Prohibits discrimination on the basis of **gender** in the K-20 public school system. This prohibition includes that “no person, on the basis of gender, may be excluded from participation in, denied the benefits of, or subjected to discrimination in any public K-20 education program or activity.” § 1005.05(2)(a).

Jeffrey Johnson Stand up for All Students Act, Section 1006.147, Florida Statutes:

Requires Florida school districts to afford **all students** the same protections against bullying and harassment, regardless of their status under the law. The law requires each individual school district to implement a policy outlining the consequences of harassment; the consequences for a wrongful accusation of harassment; and the procedure for notifying the parents of both the victim and the perpetrator of the alleged bullying or harassment. The law provides that “distribution of safe schools funds to a school district... is contingent upon... the Department of Education’s approval of the school district’s bullying and harassment policy.”

Florida Administrative Code Provision 6A-10.081 by the Department of Education:

Principles for Professional Conduct for the Education Profession in Florida

The educator values the worth and dignity of every person, the pursuit of truth, devotion to excellence, acquisition of knowledge, and the nurture of democratic citizenship. Essential to the achievement of these standards are the freedom to learn and to teach and the guarantee of equal opportunity for all. Fla. Admin. Code R. 6A-10.081(1)(a).

Obligation to the student requires that the individual... shall not harass or discriminate against any student on the basis of race, color, religion, sex, age, national or ethnic origin, political beliefs, marital status, handicapping condition, sexual orientation, or social and family background and shall make reasonable effort to assure that each student is protected from harassment or discrimination.” Fla. Admin. Code R. 6A-10.081(2)(a)(7).

C. Federal Law

First Amendment of the United States Constitution - Freedom of Speech and Expression:

The 1st Amendment has long protected students' rights to freedom of speech and expression. This fundamental right encompasses the right of students to express their sexual orientation, gender identity, and gender expression.

Fourteenth Amendment of the United States Constitution – Equal Protection:

The 14th Amendment's guarantee of equal protection of the laws imposes a duty on schools to treat LGBTQ+ students equally and to protect their constitutional rights. This includes the duty to protect LGBTQ+ students from bullying and harassment on the same basis as other students.

Title IX of the Education Amendments Act of 1972:

Title IX prohibits discrimination 'on the basis of sex' in 'any education program or activity' that receives federal funding. 20 U.S.C Section 1681(a). Title IX's prohibition of sex discrimination has been interpreted by federal courts and the U.S. and Florida Department of Education to include discrimination against LGBTQ+ students. School's Title IX obligation is to provide students "equal access to educational programs and activities"

Family and Educational Rights and Privacy Act (FERPA):

FERPA is a federal law that prohibits the disclosure of personally identifiable information and protects the privacy of student education records in all schools that receive federal funding. 20 U.S.C. 1232g; 34 C.F.R. Part 99. A student's sexual orientation and transgender status are all protected personal information, the disclosure of which could constitute a violation of FERPA. Florida Statute 1002.22 requires that all Florida public schools comply with FERPA. Further, FERPA mandates that schools must consider requests by parents to amend information in the student's education record that is in violation of the student's privacy rights, which may include the student's gender marker or name.

Individuals with Disabilities in Education Act (IDEA) and Section 504 of the Rehabilitation Act (Section 504):

The IDEA and Section 504 are federal laws that can be utilized to ensure access to the learning environment for students who need additional support. Some LGBTQ+ students are excluded from the learning environment as a result of not being affirmed at school. While being

LGBTQ+ is **not** a disability, an IEP or 504 Plan can provide support and accommodations that enable the student to succeed. And for some students, the anxiety, depression, or psychological distress caused by not having their identities affirmed at school can qualify them for an IEP or 504 Plan.

Parents' Bill of Rights

The Parents' Bill of Rights, Florida Statutes §§ 1914.01 – 1014.06, is a Florida law that protects the rights of parents to direct the education, health care, and mental health care of their minor children. It also provides that a parent may object to instructional materials based on beliefs involving morality, sex, and religion, or the belief that such materials are harmful.

RESOURCES

LGBTQ+ Support Resources

Faculty and staff should always use their professional judgment when seeking out age-appropriate resources, tools, or materials from any outside organizations. Faculty and staff should always reach out to the leadership at their school if there is any question around what resources, tools, or materials should be used or shared, including the resources below. Parental consent is necessary when engaging services with minors.

Resources for Faculty, Staff, Students, and/or Parents

- **U.S. Department of Education, Office of Civil Rights** - resources that may be of interest to LGBTQ+ students and allies, including rights and protections under Title IX
- **Equality Florida, LGBTQ+ Safe & Healthy Schools initiative** - provides tools and resources to help create a safe and affirming environment for all students
- **Human Rights Campaign, Welcoming Schools** - resources, lessons, and ideas for creating an inclusive school environment
- **GLSEN** - provides guides to students and educators to support their school experience
- **Learning for Justice** - age-appropriate lessons around race, class, gender, sexual orientation, gender identity, religion, and ability
- **Gender Spectrum** - provides online groups, resources, and a support spaces for youth and their families

Local Resources

- **Pride Community Center of North Central Florida (PCCNCF)** - non-profit LGBTQ+ organization serving Alachua, and nearby counties. Phone: 352-377-8915
- **University of Florida's Youth Gender Clinic** - UF Health's Youth Gender Program is for transgender and gender-nonconforming, or TGNC, youth and their families. Phone: 352-265-PEDS (7337)
- **PFLAG** - provides support, information, and resources for LGBTQ+ people, their parents and families, and allies; website: pflaggainesville.org; e-mail: info@pflaggainesville.org
- **Southern Legal Counsel, Transgender Rights Initiative** - provides a series of "legal notes" to help students and families self-advocate

Suicide-Prevention Resources

- **The Trevor Project** - trained counselors supporting 24/7 for young people in crisis, feeling suicidal, or in need of a safe and judgment-free place to talk. Trevor Lifeline now at 1-866-488-7386.
- **The National Suicide Prevention Lifeline** - has a resource section specific for LGBTQ+ people and those who care for them. Hotline: 1-800-273-TALK (8255)
- **Alachua County Crisis Line** - free and local 24-hour telephone crisis intervention and counseling service offered by trained volunteers. Call: 352-264-6789

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is entered into between and among Plaintiffs and the State of Florida. As used in this Agreement, “Plaintiffs” refers to Equality Florida, Family Equality, Amber Armstrong and her child, M.A., Ivonne and Carl Schulman and their child, S.S., Lindsay McClelland and her child Jane Doe, Rabbi Amy Morrison, Cecile Houry, Dan and Brent VanTice, Lourdes Casares, Kimberly Feinberg, Lindsey Bingham Shook, Anh Bolmer, Scott Berg, and Myndee Washington. As used in this Agreement, “the State of Florida” and “the State” refer collectively to the Florida Department of Education, the Florida State Board of Education, and the members of the Florida Board of Education in their official capacities.

RECITALS

A. On or about March 31, 2022, Plaintiffs commenced an action in the United States District Court for the Northern District of Florida, Tallahassee Division (the “Court”), Case No. 4:22-cv-134-AW-MJF (the “Case”), challenging the constitutionality of Section 1001.42(8)(c)3., Florida Statutes (the “Statute”), which limits “[c]lassroom instruction by school personnel or third parties on sexual orientation or gender identity” in Florida’s public schools “in kindergarten through grade 3 or in a manner that is not age-appropriate or developmentally appropriate for students in accordance with state standards.”

B. On May 25, 2022, Plaintiffs filed their First Amended Complaint. DE47.

C. The State of Florida defended the litigation and sought dismissal in part because, in the State’s view, all the conduct and speech that Plaintiffs alleged they sought to engage in was not covered by the Statute’s restriction of “classroom instruction” “on sexual orientation or gender identity.”

D. On or about September 29, 2022, the Court dismissed Plaintiffs’ complaint for lack of standing in part because the Court agreed with the State that Plaintiffs’ “asserted future actions” did not “involve classroom instruction on sexual orientation or gender identity,” which is all the Statute restricts. DE120 at 11. The

Court gave Plaintiffs another opportunity to amend their complaint. Plaintiffs took that opportunity and filed their Second Amended Complaint. DE123.¹

E. On or about November 30, 2022, the State sought dismissal of the Second Amended Complaint because its view that the Statute restricts only “classroom instruction” “on sexual orientation or gender identity” had not changed.

F. In both sets of publicly filed briefs arguing that the conduct and speech that Plaintiffs engaged in, or sought to engage in, was not covered by the Statute’s restriction of “classroom instruction” “on sexual orientation or gender identity,” the State explained that the scope and meaning of the Statute is as follows:

Background

- “As legislative staff noted,” the Statute was enacted against the background that “multiple school districts in Florida maintain[ed] policies that exclude[d] parents from discussions and decisions on sensitive topics related to students.” DE 68 at 5.
- “[S]ome Florida school boards had published ‘Guidelines for Curriculum’ that . . . referred to, for example,” an “infographic . . . designed to teach young children the concepts of sexual orientation and gender identity.” *Id.* at 7.
- “Broward County was directing teachers to respond to kindergarteners ‘when answering classroom questions that may arise’” that “[t]ransgender people change their gender once they are old enough to explain to others how they feel about their own gender. This person may change their name or pronoun.” *Id.* at 10.
- “The Florida Legislature responded by enacting H.B. 1557,” *id.* at 11, which restricts “[c]lassroom instruction by school personnel or third parties on sexual orientation or gender identity.”

¹ Plaintiffs originally named the Governor and Commissioner of Education as defendants in their official capacities. DE1. Plaintiffs later withdrew their claims against the Governor (DE91 at 30 n.11), and the district court dismissed the Commissioner as an improper defendant (DE120 at 20). Plaintiffs did not appeal that ruling.

“Classroom Instruction”

- “Instruction” is “the action, practice, or profession of teaching.” DE68 at 17. And the Statute restricts only “instruction” that occurs in a “classroom” setting. *Id.*
- “Classroom instruction” is “the formal work of teaching that occurs in a classroom setting,” and the Statute restricts “classroom instruction” only if it is “*on* sexual orientation or identity.” DE134 at 16. Accordingly, the Statute restricts only teaching on the topics of sexual orientation and gender identity in a classroom *setting*. *Id.*
- The Statute restricts only classroom instruction on particular subjects—“sexual orientation” and “gender identity.” That means that teachers must not “teach[] the subjects of sexual orientation or gender identity.” DE 68 at 19. Those subjects are “naturally understood in terms of the underlying concepts.” *Id.* The Statute would thus limit “teaching an overview of modern gender theory or a particular view of marriage equality.” *Id.*
- The Statute “thus restricts *instruction* on particular *subjects* (sexual orientation and gender identity), not mere discussion of them.” *Id.* at 18. Consistent with that view, the Legislature rejected a restriction on ‘encourag[ing] classroom instruction about’ the prescribed subjects in favor of a limited restriction on “classroom instruction.” *Id.* at 18-19.
- “[T]ypical class participation and schoolwork are not ‘instruction,’ even if a student chooses to address sexual orientation or gender identity.” *Id.* at 20.
- The Statute would also leave 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.” *Id.* For kindergarten through grade three, “they simply must not handle these situations by teaching the subjects of sexual orientation or gender identity.” *Id.*

Classroom References

- Moreover, “just as no one would suggest that references to numbers in a history book constitute ‘instruction on mathematics,’” the Statute “would not prohibit[] incidental references in literature to a gay or transgender person or to a same-sex couple. Such references, without more, are not ‘instruction on’ those topics.” *Id.* at 19.
- The Statute “does not prohibit stories where a prince and princess fall in love; it does not prohibit instruction against bullying people with one mom or two; and it does not prohibit mere references to moms and dads (or any combination thereof).” DE105 at 5-6.
- The Statute restricts the use of books “to instruct” “students on the concepts of sexual orientation or gender identity.” DE134 at 22-23. But the Statute does not restrict mere “literary references to a gay or transgender person or to a same-sex couple.” *Id.* at 17. “[R]eferences to LGBTQ identity’ do not violate the [S]tatute, as they are not ‘instruction on’ sexual orientation or gender identity any more than a math problem asking students to add bushels of apples is ‘instruction on’ apple farming.” DE152 at 5.

Non-Discrimination

- The Statute does not target “sexual *orientations* and gender identities that differ from heterosexual and cisgender identities.” DE68 at 17. “To the contrary, instruction on the ‘normalcy of opposite-sex attraction’ would equally be ‘instruction on sexual orientation.’” *Id.* The Statute “is neutral on the proscribed subjects.” *Id.*
- The Statute “applies equally, regardless of viewpoint.” DE134 at 17. Put differently, the Statute “restricts classroom instruction on ‘sexual orientation’ and ‘gender identity,’ not homosexuality and transgender identity.” DE152 at 5. “For example, it would violate the statute to instruct students that heterosexuality is superior or that gender identity is immutable based on biological traits.” DE134 at 17-18.

“Third Parties”

- The Statute’s reference to “third parties” in addition to “school personnel” simply means that “schools cannot evade the [Statute’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.” DE68 at 20.
- The Statute restricts classroom instruction by “school personnel” as well as “third parties,” but only third parties “to whom the school has delegated responsibility for such teaching—*i.e.*, agents of the public school system, not parents or students acting in the ordinary course.” DE134 at 18.

Debate

- The Statute “does not restrict ‘debate,’ only ‘classroom instruction.’” DE68 at 31. For instance, the Statute does not restrict “student-to-student speech.” *Id.* at 49.

Families

- The Statute “does not prohibit ... mere classroom references to a person’s family—whether gay or straight, transgender or cisgender.” *Id.* at 3.
- The Statute does not restrict 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).” DE68 at 17.

Bullying

- The statute does not “prohibit intervention against LGBTQ bullying.” DE68 at 18.
- The Statute does not “require[] the removal of ‘safe space stickers,’” which are not “classroom instruction.” DE134 at 20-21.

Extracurricular Activities

- The statute does not “prohibit participation in extracurricular activities (such as ‘Gay-Straight Alliances’ or book fairs)” or “after-hours tutoring.” ECF68 at 18.

- Likewise, the Statute does not restrict “lines referring to LGBTQ issues” in “musicals,” “dancing between persons of the same gender” at a school dance, or “wearing clothing inconsistent with students’ gender assigned at birth.” DE134 at 20-21 (cleaned up). “None of that is ‘classroom instruction.’” *Id.* at 21.

Library Books

- “Library books, without more, are not ‘classroom instruction’ and thus are not covered by the [S]tatute.”²

G. On or about February 15, 2023, the Court dismissed the Case, concluding again that Plaintiffs lacked standing. DE158.

H. On or about March 15, 2023, Plaintiffs filed a Notice of Appeal in the United States Court of Appeals for the Eleventh Circuit, Case No. No. 23-10866-B (the “Appeal”).

I. The Parties have reached an agreement that resolves the need for further proceedings in this matter. In consideration of the mutual promises and obligations of this Agreement, the Parties agree and covenant as follows:

TERMS AND CONDITIONS

1. Conditioned upon paragraph (2) below, Plaintiffs agree to:
 - a. Dismiss the Case and their Appeal with prejudice as to all Defendants no later than seven (7) days after the State, through counsel, confirms in writing that its obligations under paragraph (2) have been satisfied and provides copies of such transmittals to Plaintiffs’ counsel; and
 - b. Release and forever discharge the State of Florida and any officers thereof for any claims or causes of action that any Plaintiff raised or could have raised in the Case, including any claim that Section 1001.42(8)(c)3., Florida Statutes is facially unconstitutional.

² Library materials are separately governed by Section 1006.28, Florida Statutes.

Execution Version

2. Through counsel, the Florida Department of Education shall provide a copy of this Agreement, including the Recitals set forth above, to the school board of each of Florida's school districts. In so doing, counsel shall note that Recital F above sets forth considered positions the State of Florida has taken in court about the scope and meaning of the Statute and shall encourage the school districts to send a copy of this Agreement to the principals of the schools within their respective districts.

3. Each Party shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

4. Each Party to this Agreement represents that it freely and voluntarily entered into this Agreement without any degree of duress or compulsion.

5. This Agreement is governed by the laws of the State of Florida. The exclusive jurisdiction and venue for any dispute relating to this Agreement is the United States District Court for the Northern District of Florida.

6. For purposes of construing this Agreement, this Agreement shall be deemed to have been drafted by all Parties to this Agreement and shall not, therefore, be construed against any Party for that reason in any subsequent dispute.

7. This Agreement constitutes the complete agreement between the Parties. This Agreement may not be amended except by written consent of the Parties.

8. The undersigned counsel represent and warrant that they are fully authorized to execute this Agreement on behalf of the persons and entities indicated below.


9. This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same Agreement.

10. This Agreement is binding on Plaintiffs' successors, transferees, heirs, and assigns.

11. All Parties consent to each other's disclosure of this Agreement, and information about this Agreement, to the public.

Execution Version

12. This Agreement is effective on the date of signature of the last signatory to the Agreement (“Effective Date of this Agreement”). Facsimiles and electronic transmissions of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.



Date: March 5, 2024

Roberta A. Kaplan (NY #2507093)
John C. Quinn (NY #4965000)
Kate L. Doniger (NY #5128251)
D. Brandon Trice (NY #5140017)
KAPLAN HECKER & FINK LLP
350 Fifth Avenue, 63rd Floor
New York, New York 10118
Tel.: (212) 763-0883
jqinn@kaplanhecker.com

Joshua Matz (DC #1045064)
KAPLAN HECKER & FINK LLP
1050 K Street, NW, Suite 1040
Washington, D.C. 20001
Tel.: (212) 763-0883
jmatz@kaplanhecker.com

For Plaintiffs



Date: March 11, 2024

Daniel W. Bell
Chief Deputy Solicitor General
Office of the Attorney General
PL-01, The Capitol
Tallahassee, FL 32399-1050
(850) 414-3681
daniel.bell@myfloridalegal.com

For The State of Florida