

KNOW YOUR RIGHTS

NORTH CAROLINA

nea NATIONAL
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#TEACHTRUTH

Table of Contents

[What does North Carolina's new law do?](#) **4**

[What does SB 49's anti-LGBTQ+ curriculum provision do?](#) **4**

[What does SB 49's name and pronoun requirement do?](#) **4**

[What do SB 49's broad curriculum inspection provisions do?](#) **5**

[Can I still teach the truth about LGBTQ+ history and current American society?](#) **6**

[What if my students ask about current events that raise issues of sexism, sexual orientation, or gender identity?](#) **7**

[Can I still assign books and materials that contain mentions of sexual orientation and gender identity in kindergarten through fourth grade?](#) **7**

[What if a student asks me to use a pronoun that does not conform to their biological sex?](#) **8**

[What happens if a parent or community member complains about materials I assign or accuses me of violating this law?](#) **8**

[What if there is an incident motivated by anti-LGBTQ+ hate in the school?](#) **9**

[How can I continue to foster an inclusive environment at my school?](#) **9**

[How can I support my students / oppose these laws outside of school?](#) **10**

[Where can I go for more information on these issues?](#) **10**



WHAT EDUCATORS SHOULD KNOW ABOUT NORTH CAROLINA'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 North Carolina, these divisive efforts resulted in the General Assembly overriding Governor Roy Cooper’s veto to enact Senate Bill 49 (2023) (SB 49), which significantly restricts inclusive instruction related to sexual orientation and gender identity, while encouraging censorship and intimidation. The following guide answers key questions about SB 49 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 North Carolina's new law do?

- o Senate Bill 49 became law on August 16, 2023. It established new curriculum restrictions, as well as parental notification and enforcement rights. The full text of SB 49 can be found [here](#).

What does SB 49's anti-LGBTQ+ curriculum provision do?

- o SB 49 dictates that “[i]nstruction on gender identity, sexual activity, or sexuality shall not be included in the curriculum provided in grades kindergarten through fourth grade, regardless of whether the information is provided by school personnel or third parties.”
 - This prohibition applies only in grades kindergarten through fourth and only to “curric-

ulum,” which includes the standard course of study and support materials, locally developed curriculum, supplemental instruction, and textbooks and other supplementary materials[.]”

- This prohibition does not apply to “responses to student-initiated questions.”

What does SB 49's name and pronoun requirement do?

- o SB 49 requires each school board to adopt parental notification procedures “[p]rior to any changes in the name or pronoun used for a student in school records or by school personnel[.]”
 - Those procedures “shall include a requirement that school personnel” either “[e]ncourage a child to discuss issues related to the child’s

well-being with his or her parent” or “facilitate discussion of the issue with the child’s parents.”

- Schools may not adopt procedures that prevent employees from notifying a parent about their child’s “mental, emotional, or physical health or well-being[.]”
- Nor may they adopt procedures that “[e]ncourage or have the effect” of encouraging a child to withhold from their parent information about their “mental, emotional, or physical health or well-being[.]”
- “An employee of the State who encourages, coerces, or attempts to encourage or coerce a child to withhold information from



Know Your Rights

his or her parent may be subject to disciplinary action.”

- Parental notice is not required if:
 - The parent is being investigated for a crime against the child.
 - The parent is subject to an abuse and neglect claim.
 - “When a reasonably prudent person would believe that disclosure would result in the child becoming an abused juvenile or neglected juvenile[.]”

- o Notably, this is a notice only requirement. The law does not require schools to receive parental consent before addressing transgender and gender non-conforming students by appropriate names and pronouns; it only requires that parents be *notified* before school personnel use those students’ appropriate names and pronouns.

What do SB 49’s broad curriculum inspection provisions do?

- o They provide parents with three key rights: the right to inspect school materials and opt out of

certain programs, the right to request specified information, and the right to challenge school materials or enforce the provisions of SB 49.

- o The right to inspect and opt out:
 - Parents may “inspect and purchase public school unit textbooks and other supplementary instructional materials” and “consent or withhold consent for participation in reproductive health and safety education programs[.]”
 - School boards must establish “procedures for parents to learn about their child’s course of study and the source of any supplementary instructional materials[.]” including a “process for parents to inspect and review all textbooks and supplementary instructional materials that will be used in their child’s classroom.”
- o The right to request specified information about instructional materials:
 - Parents may submit a written request to their child’s principal for information about instructional materials, to

which the principal must respond within ten (10) business days or provide notice that, due to the volume or complexity of the request, the information will be provided within twenty (20) business days from the request.

- If the principal denies or fails to respond within the required time, the parent may submit a written request for the information to the superintendent.
- If the superintendent denies or fails to respond within ten (10) business days, the parent may, within twenty (20) days of the request to the superintendent, appeal to the school board.
- The school board must place the parent’s appeal on the agenda for their next meeting more than three business days away; the board’s decision is final and not subject to judicial review.
- o The right to challenge school materials or enforce SB 49’s provisions related to human sexuality instruction and parent notification.
 - School boards must establish a procedure for parents to



Know Your Rights

challenge materials, that is, “a means for parents to object to textbooks and supplementary instructional materials[.]”

- But it remains unclear how objections will be treated because state law grants local boards “sole authority” to select and manage instructional materials.
- Parents also have the right to notify their child’s principal and seek resolution of concerns regarding the school’s “procedure or practice” related to gender identity and human sexuality instruction, as well as procedures and practices related to name and pronoun notification.
 - School boards must establish a process for resolving concerns within seven (7) days of notification by the parent. If the school does not resolve the concern within thirty (30) days of notification by the parent, it must provide a statement of the reasons.
 - The parent then has two options: they can notify

the State Board of Education and request a parental concern hearing, or they can bring a lawsuit against the public school seeking declaratory and injunctive relief.

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

- o Generally, yes. If you teach fifth grade or above, you are not subject to SB 49 and face no new restrictions. If you teach fourth grade or below, you can teach about LGBTQ+ history in accordance with state standards.
- o For example, a lesson that covers “how the experiences and achievements of minorities, indigenous groups, and marginalized people have contributed to change and innovation in North Carolina[,]” under Grade 4 Standard 4.H.1.1, and discusses “ways in which revolution, reform, and resistance have shaped North Carolina[,]” under Grade 4 Standard 4.H.1.3, may include a discussion about LGBTQ+ civil rights history.

- o And you can always respond to “student-initiated questions.” If, during a discussion on “the ways in which women, indigenous, religious, and racial groups influence local and state government” under Grade 4 Standard 4.C&G.1.2, a student asks about the experience of the LGBTQ+ community, you may answer their question. Just be careful not to stray from the question. Expansive responses may be treated as additional “instruction.”
- o The vagueness of SB 49’s curriculum restriction makes it hard to predict the scope of what school districts may characterize as “[i]nstruction on gender identity, sexual activity, or sexuality” which is not permitted in kindergarten through fourth grade. Pay careful attention to the training you receive from your school and district, documenting what they interpret SB 49 to prohibit, which may change as the law is implemented.
- o Don’t forget that if the curriculum provision is implemented in a way that discriminates based on gender identity or sexual orientation,



Know Your Rights

tation – 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”). If you believe this has occurred, report the issue to your local union representative.

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

- o You can always respond to “student-initiated questions.” As an educator, you know how to handle challenging questions in professional and age-appropriate ways. Just be careful not to stray from the question. Expansive responses may be seen as additional “instruction.”
- o For example, if a student asks, during a discussion on “the roles and responsibilities of state elected leaders” under Grade 4 Standard 4.C&G.1.1, about a well-known and recently-passed state

law prohibiting gender-affirming care for minors, you may explain what gender-affirming care is and the facts surrounding the legislature’s action.

- o If you are planning a classroom lesson about recent events or controversial topics that may prompt difficult questions, make sure the lesson is aligned with the North Carolina Standard Course of Study and consider notifying or getting approval from your school principal or administrator in advance.

Can I still assign books and materials that contain mentions of sexual orientation and gender identity in kindergarten through fourth grade?

- o SB 49’s language is very broad:
 - “Instruction on gender identity, sexual activity, or sexuality shall not be included in the curriculum[,]” which applies to “the standard course of study and support materials, locally developed curriculum, supplemental instruction, and textbooks and other supplementary materials[.]”

- o It seems impossible not to assign materials that mention gender identity or sexuality. For example, the mere mention that someone is a girl or boy describes their gender identity, and a description of Martha Washington as George Washington’s wife necessarily refers to sexual orientation. However, it is hard to predict how “instruction on” these topics will be applied with respect to assigned books and other materials. Pay careful attention to the training you receive from your school and district, documenting what they interpret SB 49 to prohibit, and any specific decisions that have been made about limiting content.
- o Keep in mind that your students’ parents and guardians will have the right to review and object to any materials you assign. If you are going to assign something that may be controversial, consider discussing it with your principal or administrator in advance. Getting their approval may diminish the impact of complaints.
- o And remember that if the curriculum provision is implemented



Know Your Rights

8

in a way that discriminates based on gender identity or sexual orientation – for example, if books that mention heterosexual relationships are allowed but not books that mention 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. Depending on how the law is implemented, it may also violate the First Amendment, and possibly other federal and state laws, as well. If you believe this has occurred, notify your local union representative.

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

- o Follow your school’s procedures for notifying parents “[p]rior to any changes in the name or pronoun used for a student in school records or by school personnel[.]” That will include either encouraging the child to discuss the matter with a parent or facilitating a discussion with the parent.
- o Do not say anything that could be characterized as discouraging the student from disclosing information related to their health and well-being to a parent.
- o You may be exempt from those requirements if the parent is being investigated for a crime against the child, the parent is subject to an abuse and neglect claim, or if “a reasonably prudent person would believe that disclosure would result in the child becoming an abused juvenile or neglected juvenile[.]” If you have any concerns whatsoever about a student’s well-being, discuss them with your administration prior to notifying the parent or guardian of the student’s request to identify by a new name or pronouns, and consider documenting this in writing to your administration.
- o Once you have followed your school’s procedures, you may refer to the student by their requested name and pronouns, without waiting for parental consent.
- o Be aware 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 happens if a parent or community member complains about materials I assign or accuses me of violating this law?

- o If a parent complains about materials or otherwise accuses you of violating this law, they must file a complaint with your school’s principal.
 - The school is expected to resolve the issue within seven (7) days. If they are not able to resolve it within thirty (30) days, they must “provide a statement of the reasons for not resolving the concern.”
 - If the issue is not resolved after thirty (30) days, the parent can either request a parental concern hearing before the



Know Your Rights

State Board of Education or bring a lawsuit against the school.

- o SB 49 does not provide a private right of action allowing parents to sue educators.
- o The right to formally complain about materials is only provided to parents/guardians. Other community members are not entitled to use this complaint procedure.
- o Even though you will not face a lawsuit, you may be subject to disciplinary action for failing to comply with the state law and follow school policy.
 - If you fear disciplinary action, and you are a member of the North Carolina Association of Educators (NCAE), contact them for assistance. You can find their contact information [here](#). One of their representatives can assist you in determining your rights.

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.

- 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 SB 49 cannot stop you from fostering a supportive, inclusive environment for LGBTQ+ students.
- 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 respected

in your classroom and school, and the ways your school can make sure this happens.

- o But remember that you may need to encourage students "to discuss issues" related to their "well-being" with a parent, and your school will need to notify parents of pronoun requests, with limited exceptions where there are known or suspected risks of abuse or neglect.
- 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 the North Carolina Association of Educators (NCAE). You can find their contact information [here](#). One of their representatives can assist you in determining what rights you have.



Know Your Rights

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, outside of school, on a matter of public concern – 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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