

# KNOW YOUR RIGHTS



**#TEACHTRUTH**

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## Know Your Rights

# WHAT EDUCATORS SHOULD KNOW ABOUT ARKANSAS'S "LEARNS ACT" AND "GIVEN NAME ACT"

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. Social studies and history teachers may still teach about our country's nearly 250 years of chattel slavery, the Civil War, the Reconstruction period, and the violent white supremacy that brought Reconstruction to an end and has persisted in one or another form ever since. They 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 LGTBQ+ individuals from defending and benefiting from the freedoms and liberties that define our country. These laws should not 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 Arkansas, these divisive efforts have resulted in a set of new laws. One of these is the misleadingly-named "LEARNS Act," which imposes restrictions on teaching matters related to race, sexual orientation, gender identity, and other topics. The other new law is the "The Given Name Act," which restricts the use of students' pronouns and chosen names. The following answers some FAQs about how the new laws may affect your teaching 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 is the “LEARNS Act” and what does it do?

- o The LEARNS Act became law on March 8, 2023 and went into effect on August 1, 2023. The 145-page law is a wholesale rewrite of Arkansas’ Education Code, which does everything from repealing fair dismissal and seniority protections to creating a statewide voucher program and a high-impact tutoring program, lifts caps on charter schools, raises teacher base pay, provides teachers with paid maternity leave and restricts instruction in public schools. The full text of the LEARNS Act can be found [here](#). Governor Sanders has also launched a [website](#) with additional information on the Act.
- o The Act directs the State Secretary of Education and State Board of Education to take several steps

to prevent “teaching that would indoctrinate students with ideologies, such as Critical Race Theory” or that would “encourage students to discriminate” based on any characteristic protected under federal or state civil rights laws.

- o The Act defines “prohibited indoctrination” as any “communication by a public school employee, public school representative, or guest speaker that compels a person to adopt, affirm, or profess” the idea that:
  - people of one color, creed, race, ethnicity, sex, age, marital status, familial status, disability status, religion, national origin, or any other characteristic protected by federal or state law are inherently superior or inferior to people of another color, creed, race, ethnicity, sex, age, marital

status, familial status, disability status, religion, national origin, or any other characteristic protected by federal or state law; or

- an individual should be discriminated against or receive adverse treatment solely or partly because of the individual’s color, creed, race, ethnicity, sex, age, marital status, familial status, disability status, religion, national origin, or any other characteristic protected by federal or state law.
- o *The Act clarifies that this definition of “prohibited indoctrination” does not prohibit the discussion of “policy issues of the day and related ideas that individuals may find unwelcome, disagreeable, or offensive.” Nor does it prohibit the discussion of the “ideas and the history” of the*



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*concepts defined as “prohibited indoctrination.”*

- o The Secretary must review “the rules, policies, materials and communications of the Department of Education to ensure that there is no promotion of teaching that would indoctrinate students with ideologies such as Critical Race Theory.” The Secretary must also “amend, annul, or alter the rules, policies, materials, or communications that are considered prohibited indoctrination,” and must “review and enhance” the policies for employees, contractors, guest speakers and lecturers to “prevent prohibited indoctrination, including Critical Race Theory.”
- o The Secretary must “ensure that no public school employee or public school student shall be required to attend trainings or orientations based on prohibited indoctrination or Critical Race Theory.”
- o The Governor has also ordered the Secretary to “[comb through](#)” materials from the United States Department of Education to “en-

sure that Washington bureaucrats can’t bully Arkansas schools into teaching racist indoctrination.”

- o The Act also prohibits public school teachers from providing any “classroom instruction” on the following topics before the 5th grade:
  - sexually explicit materials;
  - sexual reproduction;
  - sexual intercourse;
  - gender identity; or
  - sexual orientation.
- It is worth noting that the state’s [Health & Safety State Standards](#) require that K-2nd grade students will be able to “name different parts of the body and describe physical characteristics that make us unique” and “distinguish different body parts, including main organs of the body, and tell what those parts do.” The 3rd-5th grade standards require that students will be able to “classify the major functions of the body systems, identify which body parts are in each system, and how to keep my body systems healthy” and

“distinguish how the body systems mature and how heredity impacts growth and development.” The state standards do not explicitly require puberty to be discussed until the 6th grade. The Act allows teachers to discuss other parts of the body before the 5th grade as long as they do not include the prohibited topics listed above. The Act does not provide specific guidance on how or in what grades reproductive organs and their functions will be discussed. NEA will monitor any new developments and update this guidance as needed.

- At the same time, the Act requires the State Division of Elementary and Secondary Education to “enhance or adapt curriculum materials to assist public school personnel in providing instruction through a multidisciplinary approach on the detection, intervention, prevention, and treatment of child sexual abuse and human trafficking.” This curriculum material will be geared toward instruction from



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Kindergarten through 12th grade, but parents and guardians may opt their children out of the instruction.

- o The Act’s restrictions on teaching related to sexual reproduction, sexual orientation, and gender identity before 5th grade are not specifically linked to any enforcement provisions. But it is likely that a violation could be the basis for an attempt to discipline or discharge an educator.

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## What is “The Given Name Act” and what does it do?

- o The Given Name Act was signed on April 17, 2023 and went into effect on August 1, 2023. The full text can be found [here](#).
- o The Act prohibits public school teachers and other employees, as well as higher education faculty, from addressing students under 18 by a name that does not match their birth certificate or a pronoun that does not match the student’s biological sex without a parent’s written permission.
- o The Act does not prevent anyone from identifying their own pro-

nouns, even if they differ from the individual’s sex assigned at birth.

- o The Act prohibits student disciplinary action or adverse employment action against any employee for refusing to address a person by their chosen name or a title or pronoun inconsistent with their biological sex.
- o The Act’s restrictions can be enforced in a civil action by any “person who is harmed by a violation.” The relief available in such an action includes injunctive relief, monetary damages, reasonable attorney’s fees and costs, and any other appropriate relief.

## Can I still teach the truth about U.S. history and current American society?

- o Yes – if you teach social studies or U.S. history or related courses, your teaching should be aligned with the relevant state standards. The “LEARNS Act” does not alter [Arkansas’s Standards for Social Studies](#) currently in place for grades K-12, which require educators to teach students about history, government/civ-

ics, economics, and geography, based on the student’s grade level including analyzing the roles of individuals, groups and events in the civil rights movement such as the murder of Emmett Till, the *Brown v. Board of Education* decision, and the desegregation of Little Rock Central High School. (Although it remains to be seen whether the State Secretary of Education will use his authority under the LEARNS Act to propose changes to the current standards.)

- o Remember the “prohibited indoctrination” provisions of the LEARNS Act only prohibit efforts to “compel a person to adopt, affirm, or profess” certain beliefs. The Act specifically provides that discussion of the ideas or history of concepts that are deemed “prohibited indoctrination” are allowed, as are discussions of public “policy issues of the day and related ideas that individuals may find unwelcome, disagreeable, or offensive.”
- o The LEARNS Act prohibits public school teachers from provid-



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ing any “classroom instruction” before the 5th grade on sexually explicit materials, sexual reproduction, sexual intercourse, gender identity; or sexual orientation.

- The Act does not prohibit discussing these topics with students in grades 5 and above as part of an approved curriculum or in response to student questions.
- o Classroom lessons aligned with [Arkansas’s Standard for Social Studies](#) remain defensible.
- o As always, you should never teach that any race or sex is inherently superior or inferior to another race or sex, or that individuals should be treated badly on the basis of their race or sex.

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

- o As an educator, you know how to handle challenging questions in professional and age-appropriate ways.
- 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 [Arkansas’s Standard for Social Studies](#) and past practice. You may also 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 Always remain neutral in classroom discussions on matters of political controversy and tell students that you are remaining neutral. School discussions and instruction are intended to prod and engage students in forming their own views. Ask students what they think rather than offering your own view on politically sensitive issues.

## What if there is a racial incident, an incident motivated by racism, or an anti-LGBTQ+ incident, in the school?

- o Neither the LEARNS Act nor The Given Name Act 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.

## What is considered “classroom instruction” on topics of “gender identity” or “sexual orientation”? Does it mean, for example, that a teacher can use books with LGBTQ+ characters? Does it mean that all discussion of families and the many different ways families are formed must be avoided altogether in grades K-4?

- o We do not yet know how the Act will be applied. The Arkansas Department of Education has not provided guidance on the implementation of the law.
- o Nevertheless, the Act should not apply to books simply because they contain LGBTQ+ characters, feature same-sex couples or depict the type of family and romantic plot lines of other books



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for the grade in question, particularly if the lesson being drawn from the book is not about sexual orientation or gender identity. Nor should it apply to a teacher acknowledging sexual orientation or gender identity by, for example, having a photo of their same-sex spouse displayed on their desk when other teachers are free to keep photos of family members.

- o If you are a K-4 teacher and will be teaching about families and the many different types of families, you may want to discuss and seek the approval of an administrator about how you will discuss same-sex and opposite-sex families.

## **How can I continue to foster an inclusive environment at my school? Can I display a Black Lives Matter or PRIDE flag, etc. in my classroom?**

- o We know that culturally responsive, racially and gender-inclusive curricula and pedagogical approaches work. They engage students and improve student retention and achievement. Talk to your school principal or admin-

istrator 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. Acting together with other educators and involving your union can greatly strengthen your advocacy for inclusive classrooms, school practices and curriculum.

- o If you plan on posting a symbol of inclusion, such as a Black Lives Matter, LGBTQ+ Pride, or DREAMers flag or poster, and have not seen other educators posting similar items in their classroom, make sure to tell your school principal or administrator in advance so you can address any concerns they may have.
- o If your school principal or another school administrator bars you from posting such inclusive signage, consult your union representative about how best to proceed. One possibility to consider is posting broader inclusive messages such as signs that show support for all students and their families. Such signage may simply state: "This is a safe space for all children and their families."

## **What protections do my students have?**

- o Title IX prohibits discrimination against students based on their sexual orientation or gender identity. The scope of these prohibitions is currently subject to both federal regulatory action and federal litigation, but at a minimum, Title IX requires that LGBTQ+ students be treated the same as other students and not be subjected to discriminatory or harassing treatment. Prohibited harassment can consist of offensive comments, gestures, and physical acts of a sexual nature, or can be non-sexual but related to sex (including sexual orientation or gender identity) by school staff or other students. The U.S. Department of Education has advised that the failure to treat students consistent with their gender identity, including repeated failure to use the student's correct pronouns, can be a form of harassment.
- o If the school is aware that a student or students are experiencing harassment that is so frequent





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and severe that it prevents them from participating in school activities, the school is required by federal law to take steps to prevent it.

- o You can report a Title IX violation to USED OCR, [here](#), or to the DOJ, [here](#).
- o Students also have free speech rights at school. Generally, schools cannot censor student speech unless there is reason to think that it will substantially disrupt school activities or infringe others' rights. That means students should be allowed to wear or display Pride gear and speak out about LGBTQ+ issues.
- o To the extent the LEARNS Act or Given Name Act conflict with the federal law protections of Title IX, federal law governs. In other words, the new state laws may not be enforced by school districts in a way that results in discrimination or harassment of staff or students based on their sexual orientation or gender identity.

## How can I advocate for my students?

- o As employees, educators' free speech rights are more limited than those of students. You have the strongest protections when you are speaking on school time as private citizens on matters of public concern. That means that educators generally have the right to advocate for the rights of their students when they are off duty, for example, by attending a protest or a school board meeting.
- o But when educators are performing their duties as school employees, school districts have the right to set policies around what teachers say in the classroom, what curriculum to use, and what to display.

## What happens if a parent, student, or member of the community accuses me of violating the law?

- o The LEARNS Act does not create a way for parents to file lawsuits in court directly against educators. However, a complaint to the school district or Arkansas Department of Education may

prompt an investigation and/or disciplinary procedures against you for failure to comply with state laws and school district policies.

- o The Given Name Act allows any person "harmed" by a violation of the law to file a lawsuit. An action can possibly be filed against an educator. Also, a complaint to the school district or Arkansas Department of Education about an alleged violation may prompt an investigation and/or disciplinary procedures against you for failure to comply with state laws and school district policies.
- o If your school district or the Arkansas Department of Education takes action against you for an alleged violation of the law or school district policies, and you are represented by a union, contact your union for assistance. You can find your local union's contact information on the Arkansas Education Association [website](#).
- o Your union representative can assist you in determining what rights you have. Your school district cannot discipline you or



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terminate or non-renew your contract of employment for an unlawful reason, such as your race or sex, or as punishment because you properly exercised your First Amendment rights outside of school (as described below).

## 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 during non-work time and outside of school – for example, by speaking at a school board meeting, church, or other local community group meeting, attending a rally, writing a letter to the editor, or posting on Facebook or other social media.
- o You can join your students at these off-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 stay up to date on the education justice movement

and the NEA EdJustice [Stand Against Hate and Bias pledge](#) to show your support for LGBTQ+ students and educators.

## 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 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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