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Ron DeSantis' Attempt to Erase Trans People From Florida Schools Is Now Underway

BY MARK JOSEPH STERN

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The laws are part of DeSantis' broader campaign against LGBTQ+ equality. Paul Hennessy/SOPA Images/LightRocket via Getty Images

On Monday, the deputy general counsel of Florida's Orange County Public Schools system sent an email to principals announcing new policies for the upcoming academic year. To implement recently enacted state laws, the email announced, the school district—which encompasses Orlando and serves more than 200,000 students—would be required to target transgender teachers, staff, and students for discriminatory treatment. Transgender teachers may no longer use their preferred pronouns or titles (such as Mr. or Ms.) in class; they must instead use the pronoun and title that corresponds to their “biological sex,” as assigned at birth. Transgender teachers, staff, and students may no longer use the bathroom that aligns with their gender identity at school. And transgender “visitors”—including parents, guardians, and students from other districts or states—will face criminal prosecution if they use the bathroom that fits their gender identity on school premises.

The guidance arrives amid a severe teacher shortage in the school district, with hundreds of

vacancies left unfilled. It flows directly from two laws passed by Florida’s Republican-controlled Legislature, and signed by GOP Gov. Ron DeSantis, that mandate discrimination against transgender people throughout the state. Taken together, this slate of legislation appears designed to drive transgender teachers and staff out of the state’s public school system altogether, subjecting them to constant threat of discipline for simply existing as a trans person. It also singles out transgender students for disfavored treatment, isolating them from their classmates and limiting their ability to use the restroom on campus. These laws, as well as the guidance implementing them, are highly vulnerable to civil rights challenges—particularly those rooted in the defense of free expression and workplace equality. Slate spoke with lawyers for several different civil liberties groups on Monday who were considering legal action in the near future.

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H.B. 1069 and H.B. 1521, the two laws in question, are part of DeSantis’ broader campaign against LGBTQ+ equality, which he equates with the “wokeness” that he seeks to eradicate from Florida. They build upon earlier legislation, including the notorious “Don’t Say Gay” law, that censored discussion of LGBTQ issues, people, and families in the classroom, as well as book bans that disproportionately target LGBTQ-themed literature at public schools. H.B. 1069 states that “it shall be the policy of every public K-12 educational institution” that “a person’s sex is an immutable biological trait and that it is false to ascribe to a person a pronoun that does not correspond to such person’s sex.” The measure compels teachers and staff to identify with the sex that appeared on their original birth certificate—so, for example, a transgender woman must use he/him pronouns and the title of “Mr.” It also gives all teachers, staff, and students the right to misgender trans employees, and forbids teachers from asking for students’ preferred pronouns.

Orange County Public Schools will begin implementing these rules immediately. The district has also created a separate procedure for students who wish to use a name at school that is

different from their legal name. From now on, parents must fill out a form granting teachers permission to use any such name in class. This policy applies to all students, not just transgender ones. So a student named Robert who wishes to go by Bob will now need a permission slip to do so. Teachers may never ask a student for their preferred pronouns; those who do may have their educator's certificate revoked.

H.B. 1521 imposes a separate set of restrictions on transgender people's use of bathrooms on a public school campus. The law forbids transgender teachers, staff, and students from using the bathroom that aligns with their gender identity. Teachers and staff face professional discipline for violating this rule, while students face a "penalty" and a "disciplinary referral." The act authorizes a broad range of punishments, apparently up to and including termination and expulsion. Any transgender "visitor" on campus who uses the bathroom that corresponds to their gender identity, and "refuses to depart" when asked, faces charges for criminal trespass. This alleged crime carries a sentence of one year in jail. A "visitor" can include parents of students, athletes from another school participating in a sporting event, or any other trans person who happens to be on campus. The Florida attorney general may also levy a \$10,000 fine on any school district that fails to comply with these rules.

The restrictions imposed on the Orange County Public Schools system—which, with minor variations, are now in effect at public schools across the state—contain a host of legal infirmities. To start, H.B. 1069 censors teachers' free speech based on content and viewpoint, a cardinal sin under the First Amendment. The law explicitly seeks to enforce the state's belief that "it is false to ascribe to a person a pronoun that does not correspond" to their sex assigned at birth. It does so by gagging transgender teachers who do not share this belief, forcing them instead to **convey the state's message** that their gender identity is "false." H.B. 1069 thus simultaneously silences speech (by banning the use of certain words because they express a forbidden viewpoint) and compels speech (by forcing the use of other words because they express an approved viewpoint). Meanwhile, cisgender teachers are expressly permitted to misgender their trans colleagues, because doing so promotes the orthodoxy that Florida wishes to enforce through a speech code.

These rules also appear to conflict directly with Title VII of the Civil Rights Act of 1964. In *Bostock v. Clayton County*, decided just three years ago, the Supreme Court found that Title

VII prohibits employers from discriminating on the basis of “transgender status,” because doing so inherently takes an employee’s sex “into account.” Florida’s censorship law is in direct violation of *Bostock*. It treats transgender teachers differently—and worse—because their gender identity does not align with their “sex” as defined by the state. A school district cannot apply the gag order without taking a teacher’s sex into account, precisely the kind of consideration barred by *Bostock*. Cisgender teachers are free to use their preferred pronouns and titles, while transgender teachers are not. The relevant factor in this distinction is a person’s sex. And Title VII does not permit such sex-based discrimination.

For similar reasons, the bathroom regulations raise serious questions under both Title VII and Title IX, which bars sex discrimination against students. Some courts have found that these statutes, as well as the Constitution’s equal protection clause, protect the rights of transgender teachers and students to use the school bathroom that aligns with their gender identity. In January, however, the conservative U.S. Court of Appeals for the 11th Circuit, which includes Florida, upheld an anti-transgender bathroom policy, distinguishing it (dubiously) from the discrimination at issue in *Bostock*. That decision created a circuit split that must eventually be settled by the Supreme Court. (A similar split over state bans on transgender health care is making its way to the Supreme Court right now.) So it is difficult to predict how these provisions of the law will fare in court.

Last month, DeSantis’ presidential campaign reposted a video that boasted about his efforts to pass some of “the harshest, most draconian laws that literally threaten trans existence.” Orange County Public Schools’ new policies reflect the success of those laws, in the sense that they are obviously intended to banish transgender people from public education. But like DeSantis’ drag ban—which a federal court blocked under the First Amendment—they do so by censoring free expression, shutting down speech that conflicts with the state’s viewpoint about gender. They also discriminate openly on the basis of sex out of a bare desire to harm transgender teachers, staff, and students. These are authoritarian tactics meant to shut down the free exchange of ideas and persecute vulnerable minorities, with no plausible connection to the state’s purported goals of increasing safety and improving public education. They are anathema to a liberal democracy. But Florida looks less and less like a democracy by the day. 🏳️‍🌈

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