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Why Kentucky schools that follow state anti-trans law may run afoul of federal laws



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Kentucky school districts run the risk of violating federal laws in their attempt to abide by a recently passed anti-trans state law, according to guidance provided by the Kentucky Department of Education.

The guidance released Monday outlines the different aspects of Senate Bill 150 that immediately went into effect at the end of March. Schools can no longer give lessons about sexually transmitted diseases and human sexuality before the sixth grade or lessons "studying or exploring" sexual orientation or gender identity. Teachers also can refuse to use the pronouns a student identifies with, among other requirements.

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In multiple areas of the guidance, the department points out that some sections of the new law contradict federal laws. In reference to one section, the guidance says it "creates some confusion regarding student privacy," and advises districts "of their obligations under the Family Educational Rights and Privacy Act (FERPA)."

"To the extent there is any conflict between SB 150 and FERPA, districts should comply with FERPA," the guidance continues.

The law requires districts to create bathroom policies that forbid trans and nonbinary students from using the school facilities they identify with, which could be interpreted as discrimination that is impermissible under Title IX regulations, the guidance states. It also says not using a students' preferred pronouns could qualify as impermissible discrimination.

"Districts should consult with board counsel for legal advice regarding usage of requested pronouns and potential liability concerns," it states.

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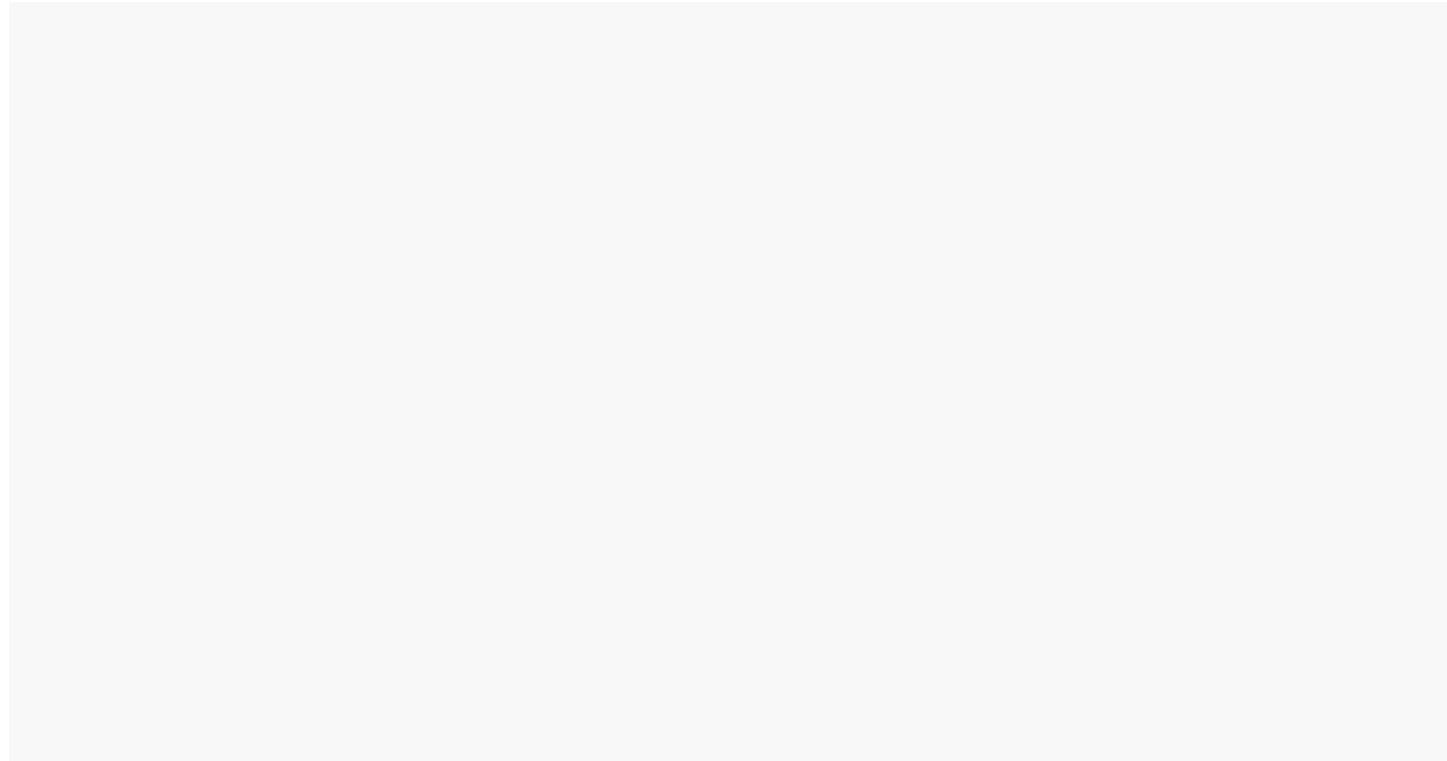
Kentucky schools were previously required to teach fifth grade students about the male and female reproductive body parts and about the social and emotional changes that occur during puberty. The guidance states schools can no longer give these lessons until sixth grade, due to the law.

Additionally, schools cannot provide lessons that have the goal or purpose of having "students studying or exploring gender identity, gender expression or sexual orientation."

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It is unclear which, if any, courses districts will need to cut or alter due to this requirement. Jefferson County Public Schools spokesman Mark Hebert couldn't say what changes to coursework are needed to comply with the law.

"We are reviewing the guidance from KDE to ensure we follow the law and better understand its potential impact on our teachers and students," Hebert wrote to The Courier Journal.



Given the law appears to run afoul of federal laws, it could face legal action. The ACLU of Kentucky has said on multiple occasions it is considering challenging the measure.

"To all the trans youth who may be affected by this legislation: we stand by you, and we will not stop fighting. You are cherished. You are loved. You belong," the ACLU of Kentucky said after the law passed in March. "To the commonwealth: we will see you in court."