



- Articles
- Extras
- COVID19
- Magazine
- Jobs
- Grad School
- Products
- Events
- Nonprofit

Home / Articles / Ethics /

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# Ethics Alive! Ethical Conundrums for School Social Workers in Light of Legal Restrictions on Discussing Gender and Sexuality

by **Allan Barsky**

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*by Allan Barsky, JD, MSW, PhD*

Ethical challenges arise when school social workers (SSWs) are faced with conflicting ethical codes, laws, and policies. In particular, this article focuses on laws restricting SSWs' ability to discuss sexuality and gender with students.

**Note that this article is not intended to provide legal advice.** I am not a licensed attorney. The laws are complex, new, and still being interpreted by various courts and attorneys. You may need to consult with an attorney for specific interpretations of the laws in your state and for legal advice. Still, it is important for SSWs to understand the potential implications of these laws and to play an active role in responding to them. It will also be helpful for social workers outside the school system to understand these laws so they can provide appropriate support for students and SSWs. Social workers outside the school system may also gain insight into ways of managing other ethical dilemmas that arise when their ethical and legal obligations conflict.

As the [School Social Work Association of America](#) (n.d.) suggests, SSWs embrace the value of *dignity and worth for all people*, putting this core social work value into practice by understanding diversity, encouraging self-determination, and building culturally competent educational settings. As is true for all social workers, SSWs are guided in their practice not only by their ethical codes, but also by federal and state laws, and the policies implemented by their practice settings (including district school boards and individual school policies). When the guidance that SSWs receive from their ethical codes, relevant laws, and school policies conflict, SSWs face ethical dilemmas. In such situations, it may be impossible for social workers to follow their ethical codes without violating certain laws or policies, or to follow relevant laws or policies without violating their ethical codes.

The purpose section of the *NASW Code of Ethics* states that, when faced with such conflicts, social workers “must make a responsible effort to resolve the conflict in a manner that is consistent with the values, principles, and standards expressed in this *Code*.” The code does not, however, dictate which source of guidance social workers should ultimately prioritize: social work ethics, relevant laws, or policies. The code does instruct social workers to seek “proper consultation” before making decisions. Proper consultation could include speaking with a supervisor or administrator within the school system, an ethicist, a professional consultant, NASW’s consultation services, one’s licensing board, or an attorney.

## The New Laws

Within the past year, some states with Republican-led legislatures have enacted or have considered enacting legislation restricting whether and how school personnel can discuss sexual orientation and gender identity in public schools (kindergarten to Grade 12). Some states have also prohibited “gender-affirming” care (Brin, 2022), which could include physical health, mental health, and social support services for people who identify as transgender, gender nonbinary, or gender nonconforming.

In Florida, [House Bill 1557](#) (HB 1557), which went into effect July 1, 2022, is entitled the “Parental Rights in Education Act” (2022). This law purports to protect parental<sup>[1]</sup> rights concerning the health care and moral upbringing of their children. People questioning the motives of HB 1557 have dubbed this bill as the “Don’t Say Gay Act.” Although HB 1557 does not completely prohibit teachers and other school personnel from talking about lesbian, gay, bisexual, transgender, queer, or questioning people (LGBTQ+), it does place restrictions that could have significant impact on whether and how they discuss sexual orientation and gender identity. Specifically, HB 1557 prohibits “classroom instruction on sexual orientation or gender identity in kindergarten through grade 3 or in a manner that is not age-appropriate or developmentally appropriate for students in accordance with state standards.”

The actual impact of this legislation is unclear, first, in terms of what “age-appropriate” means and who will determine what is age-appropriate. Further, the language is so broad that it could prohibit teachers from talking about the gender roles of a child’s parents (whether heterosexual or LGBTQ+) and might even prohibit kindergarten teachers from encouraging students to draw a picture of their parents. The law authorizes the Florida Department of Education to develop regulations to flesh out the meaning of these laws; however, many teachers and school personnel (including SSWs) have already been directed by their schools and school boards to change what they are teaching in order to comply with HB 1557. Although HB 1557 is broad enough to prohibit discussion about heterosexual and cisgender people, critics of the law believe that implementation and enforcement will focus on situations involving discussion of LGBTQ+ people and same-gender relationships ([Equality Florida et al. v. DeSantis et al., 2022, Complaint](#)). Of particular concern to social workers are the following provisions:

- Prohibiting school districts from adopting procedures or support forms that prohibit school personnel from disclosing information related to a student’s mental,

emotional, or physical health or well-being to parents, or that encourage students to withhold such information; and

- Requiring that parents be notified of all health care services offered at their student's school and given the opportunity to individually consent to, or decline, each service.

A plain-language reading of these provisions suggests that SSWs (and other school mental health providers) are not allowed to discuss gender- and sexuality-related issues with students unless they first have parental permission. This provision may discourage students who are struggling with issues about gender or sexuality from speaking honestly and openly with SSWs or other school personnel. Students will no longer have safe spaces to speak with SSWs. Students who do not want their parents to know about their concerns will not be able to talk with their SSWs, as the law requires parents to be notified of all health care concerns. These may include concerns related to mental health, sexuality, and gender identity. This could also discourage students from talking to SSWs about concerns such as birth control, dating, sexual harassment, unplanned pregnancies, sexually transmitted infections, and sexual health. Some schools have already removed books with LGBTQ+ characters or themes from their libraries. Others have stopped offering support groups or other safe meeting spaces for students who identify as LGBTQ+.

Given that the laws are new and that regulations, policies, and school staff trainings are still being developed, the longer-term impacts of the laws and how they will be implemented are unclear. Still, this law permits parents to sue for damages (money compensation) and injunctive relief (orders mandating changes in the school's policies and practices). Many SSWs, as well as teachers and other school employees, are deeply concerned and fearful about the impacts of this legislation on students, teachers, SSWs, and others affected by

HB 1557. Some of its provisions, for instance, focus on “classroom instruction,” not on extracurricular activities or clubs. Thus, while it may be illegal for a first-grade teacher to read students a story involving a same-gender couple, it would not necessarily be illegal for a high school to offer an after-school LGBTQ+ support group. Many SSWs and other school personnel are concerned that HB 1557 and similar laws not only limit discussion about gender and sexuality, but also promote negative stereotypes and deny the existence of LGBTQ+ people.

SSWs are supposed to take action against discrimination, including discrimination against LGBTQ+ students ([NASW Code of Ethics, 2021](#), S.6.04[d]). Thus, if a school wants to close down a group for LGBTQ+ students, SSWs could advocate for the students, encouraging the school to maintain this group. If the school raises questions about the legality of the group, the SSWs could encourage the school to obtain legal advice. If the school is concerned about how parents might react to the group, SSWs could engage parents and other school personnel in a discussion about HB 1557, the needs of LGBTQ+ students, and how the group could be implemented in a safe and legal manner.

Some SSWs may be afraid to advocate for a group for LGBTQ+ students, fearing retaliation, including concerns about being fired. In a politically charged environment, it can take a lot of [moral courage](#) to stand up for what is right. Before any individual SSW seeks to take a stand and advocate for LGBTQ+ students, it is important to access support. SSWs may be able to find allies within their schools or school districts. They may also be able to connect with groups that work with and advocate on behalf of LGBTQ+ people (e.g., [National Center for Transgender Equality](#); <https://www.nclrights.org>; [Human Rights Campaign](#); [American Civil Liberties Union](#); [Family Equality Council](#); [Lambda Legal](#); [The Trevor Project](#); [Parents, Friends and Family of Lesbians and Gays \[PFLAG\]](#); and state and local LGBTQ+ organizations). Just as we let LGBTQ+ students know that they are not alone, we also need to let SSWs and other advocates know that they are not alone.



If a school decides to prohibit groups for LGBTQ+ students, another option is to facilitate referrals to LGBTQ+ groups, social workers, and other mental health professionals in the community. This option has limitations, including challenges for students who may not have access to transportation or who may not have parental approval to participate in such groups. School administrators may also discourage SSWs from making referrals to community-based LGBTQ+ resources, fearing that this could violate HB 1557 or similar legislation. As SSWs are not attorneys, they should not offer legal advice; however, they could seek out attorneys who could provide legal advice about whether and how SSWs and other school personnel may facilitate referrals to community-based LGBTQ+ resources.

## Legal Challenges

Before getting into other ways SSWs can manage ethical challenges that arise in relation to laws such as HB 1557, it is important to note that there have been a number of legal challenges regarding the constitutionality of HB 1557. This law might violate the [U.S. Constitution](#) in relation to freedom of expression, equal protection of the laws, and due process. Legal challenges suggest that HB 1557 discriminates against LGBTQ+ students, discouraging them from coming out in schools and subordinating or denying their identities ([Equality Florida et al. v. DeSantis et al., 2022, Complaint](#)). HB 1557 may also violate the [Florida State Constitution](#) in relation to “privacy.”

Further, some provisions in this law might conflict with federal protections, such as the confidentiality and privacy protections under the [Family Educational Rights and Protections Act](#) (FERPA, 1974) and the [Health Insurance Portability and Accountability Act](#) (HIPAA, U.S. Department of Health and Human Services, n.d.). If HB 1557 is found to be unconstitutional, the courts may strike down all or some of its provisions. Unless and until HB 1557 is ruled unconstitutional, many school districts, SSWs, teachers, and other school personnel will be required to follow its terms. Otherwise, they may face

legal actions as well as discipline through their school boards, including the possibility of being fired from their positions.

## Creating Safe Spaces

LGBTQ+ students often face harassment and discrimination, making them more likely to experience anxiety, depression, and suicidal ideation. For some LGBTQ+ students, family is not a safe space for them to come out or discuss their sexuality or gender. Schools can offer LGBTQ+ safe spaces to come out; to discuss concerns about their gender and sexuality; and to find support among other students, teachers, SSWs, and other school personnel. SSWs may play a key role in facilitating such safe spaces, for instance, helping students develop groups such as gay-straight alliances, diversity clubs, anti-harassment trainings, or other groups that can offer social support, information, and referrals for additional help.

Some schools and school districts have already told their staff to stop offering such groups, fearing that they would violate HB 1557. The wording of HB 1557 does not necessarily prohibit such groups. Social workers' primary ethical obligation is to their clients ([NASW Code of Ethics, 2021, S.1.01](#)), including clients who may have concerns related to their sexuality or gender. When social workers identify people with needs for mental health and social services, they have an ethical obligation to help provide access to such services.

## Counseling Services

SSWs play vital roles for students, including the provision of individual, group, and family counseling to help students succeed academically and behaviorally. SSWs also help students and families identify and address an array of biopsychosocial concerns, including situations that might lead to homicidal or suicidal ideation. On its face, HB 1557 does not seem to prohibit SSWs from providing counseling services to students with concerns related to gender and sexuality. However, it does prohibit school personnel from



encouraging students to withhold information about their mental, emotional, or physical health or well-being from their parents.

Consider, for instance, a 15-year-old student who presents with suicidal ideation, fearing how their parents might react if the parents found out that their child is transgender. This provision seems to prohibit the SSW from encouraging the student to explore their gender identity at school or in other safe spaces, but to avoid disclosing it to their parents. Further, HB 1557 seems to require the SSW to inform the parents that their child is requesting counseling services and to request their permission. The SSW faces a dilemma. On one hand, the SSW wants to create a safe space for the student to receive assistance, meaning that maintaining the student's confidentiality is paramount ([NASW Code of Ethics, 2021](#), S.1.07[c]). On the other hand, the SSW may be restricted, legally, from providing services without notifying parents and requesting their permission. Unfortunately, this could put the student's life and mental health at further risk, and the student may decide to refuse services rather than involve their parents.

The SSW should consider a range of options:

- Assess the client's level of risk for suicide, and determine whether the student needs crisis intervention services, a safety plan, or other types of support.
- Assess whether the student's concern about coming out to their parents is related to a child protection issue (e.g., risk of physical or emotional abuse), and consider whether and how to report this issue to child protection services.
- Let the student know that the SSW is not allowed to provide services without parental permission, and offer to refer them to community-based helping professionals or

services that can offer help without notifying the parents or requesting their consent. (Note that some SSWs have been told that students may seek community-based services on their own, but HB 1557 may prohibit SSWs from referring students to services without parental consent. HB 1557 does not explicitly mention referrals, so this issue may be open to interpretation.)

- Explore options for letting the parents know that the client is transgender (e.g., a family meeting that includes the SSW), while empowering the client to decide whether or not to do so.
- Consider with the student whether it would be appropriate to share with the parents that the student is feeling anxious or depressed, but not disclose information about the student's gender identity (inviting parental support while respecting the student's choice not to come out at this time). The parents might consent to counseling, but the risk is that the parents are not informed about some of the issues causing their child's anxiety or depression.
- Advocate with the school to determine whether there is the possibility of an exception in which the SSW can provide the student with services without parental notification or consent.

When considering which options to pursue, SSWs should consider their client's right to be treated with dignity and respect, protection of the client's life and well-being, the parents' rights, and the implications of relevant laws (including HB 1557 and child protection laws).

As noted earlier, SSWs should seek supervision and consultation. There may be additional options and concerns for the SSW to consider. Regardless of which option the SSW decides to pursue, there may be risks and benefits. Further, reasonable social workers may disagree about the best way to handle the situation. By consulting others and documenting how they worked through the issues, SSWs may be able to make better decisions for their students, their schools, and themselves (Barsky, in press).

## Conclusion

This article raises just a few of the ethical issues that may arise for SSWs operating in states that have laws prohibiting school personnel from discussing issues related to gender and sexuality, or from offering services to students without parental notification and consent. Beyond determining how to respond to specific situations, social workers—within and outside the school system—can play key roles in supporting the mental health and well-being of LGBTQ+ students. For instance, social workers can:

- Respond honestly, openly, empathically, and respectfully to students, parents, or teachers who raise concerns related to gender and sexual orientation.
- Develop policies and forms that help SSWs to navigate the ethical and legal issues that they encounter in light of laws that restrict discussions regarding sexuality and gender with students (e.g., informed consent forms that provide students with information about the limitations on confidentiality, including when parents may need to be notified and when parental consent is required).
- Work with and help develop community-based service providers to help fill potential voids created when schools are not able to provide safe spaces, crisis intervention

services, and confidential counseling to LGBTQ+ students (e.g., identifying service providers who can help students on a confidential basis, ensuring that students know how to access community based providers through hotlines such as [211](#) [community services] or [988](#) [for people with suicidal thoughts or other crisis situations]).

- Help educate school administrators and legislators about the negative impacts of “Don’t Say Gay” laws and offer suggestions for better ways to protect student well-being, while also respecting parental rights.
- Help gather information or conduct research to inform future legislative and school policy decisions.
- Empower young people and families to organize, helping them advocate and have a voice in how student rights and interests will be protected, both inside and outside the school system.
- Work with teachers and other school employees, supporting one another and trying to determine the best way to manage ethical and legal issues raised by laws such as HB 1557.
- Participate in legal challenges of laws that discriminate against LGBTQ+ people or deny free speech and other constitutionally protected rights and freedoms (e.g., working with advocacy groups; providing amicus briefs; or supporting teachers, parents, or students who plan to testify).

Some SSWs are feeling anxious, dispirited, or defeated by HB 1557 and similar laws that have made it harder to perform their jobs in an effective

manner. They want to do good for the students they serve, but they feel that legal restrictions and threats of lawsuits are impairing their work. Some SSWs fear that even raising concerns about the new laws could put their jobs in jeopardy. Some have resigned or are considering leaving their positions. In this challenging environment, it is particularly important to provide SSWs with tangible and moral support, listening and validating their concerns, as well as working together to determine the best path forward.

When faced with laws that conflict with social work values and ethics, social workers in all fields of practice need to advocate for changes in laws and social policies. To be effective in their work, social workers must work collaboratively with various professionals and community organizations. They must also work collaboratively with people from different ideological and political perspectives for the good of the individuals, families, groups, and communities that they serve.

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[1] Throughout this article, “parents” includes biological parents as well as other legal guardians.

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