



HUMAN
RIGHTS
CAMPAIGN
FOUNDATION®



HRC EDUCATION POLICY BRIEFING:

Unpacking Executive
Orders related to K-12
schools and the impact on
LGBTQ+ students and
families



TRUMP ADMINISTRATION

EXECUTIVE ORDERS



Sarah Warbelow, Vice President, Legal
Cathryn Oakley, Senior Director, Legal Policy

Executive Orders are a Tool for Enforcement

Cabinet/Agencies » Enforcement (and interpretation in service of enforcement)

Administrative enforcement (by agencies)

- Receive and investigate complaints; settle or litigate violations in administrative court
- Regulations (administrative law), Guidance to explain enforcement

Civil suits in federal court - federal government can sue or be sued in federal court - including for civil rights violations

Federal criminal prosecution - bring charges in federal court of alleged violations of criminal law



Legislative

Pass Laws



Judicial

Interpret Laws



Executive

Enforce Laws



Bostock is binding precedent
with or without EOs

REPEALS

What Happened in Week One?

(a partial list)

- Executive Order 13985 of January 20, 2021 (Advancing Racial Equity and Support for Underserved Communities Through the Federal Government). (Biden)
- Executive Order 14091 of February 16, 2023 (Further Advancing Racial Equity and Support for Underserved Communities Through the Federal Government). (Biden)
- Executive Order 13988 of January 20, 2021 (Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation). **Directing federal agencies to update rules, policies, and guidance to implement the Supreme Court's decision in *Bostock v. Clayton County* that federal sex nondiscrimination provisions include sexual orientation and gender identity.** (Biden)
- Executive Order 11246 of Sept. 24, 1965. **Prohibits covered contractors and subcontractors from engaging in discrimination** based on race, color, religion, sex, sexual orientation, gender identity or national origin (LBJ)



NEW *Executive* ORDERS

Definition of Sex

- Misgendering
- Bathroom ban in fed blgs
- Passports
- TBD

Education

- "Anti-American"
- Curriculum censorship
- Prosecution of teachers

Bostock Rollbacks

- Correct "misapplication of Bostock"
- Directs agencies to reverse course on *Bostock*
 - Attempts to add bathroom ban to Title VII (including schools)
 - Healthcare

Healthcare

- For adolescents under 19
- Research
 - Federally funded care
 - Federally funded entities





New Anti-Trans EO

REDEFINITION OF SEX



(very incorrectly)

“Male” means a person belonging, at conception, to the sex that produces the small reproductive cell.



Passports

- X no longer issued
- Unable to change for new/renewed

Incarceration

- Housing
- Health Care

Federal Property Bathroom Ban

Title VII enforcement

HUD Equal Access Rule

- Withdraw
- Work toward exclusive shelters

Revoke guidance, remove materials

TRANSGENDER HEALTH CARE

If implemented fully as written, this EO would effectively prevent most transgender people under the age of 19 access to all medical gender affirming care, including puberty blockers.

HHS/OMB
Prohibit recipients of Medicare, research funds from providing care

HHS
Revise ACA regulations, including Section 1557

Strips coverage of care from federal health plans, including TRICARE

Calls for research into care with skewed directions



EDUCATION

This order directs the Departments of Education, Defense, and Health and Human Services to work with the Attorney General to develop a strategy within 90 days that includes a plan to eliminate federal funding for K-12 schools that engage in what the order characterizes as “anti-American ideologies,” including education that it says is “based on gender ideology and discriminatory equity ideology.” It also encourages the prosecution of teachers and officials who respect a student’s transition.

“Anti-American”

“Based on gender ideology and discriminatory equity ideology”

Curriculum Censorship

Develop a plan to eliminate federal funding for K-12 schools

Prosecution of teachers

Encourages the prosecution of teachers and officials who respect a student’s transition



“ENDING RADICAL INDOCTRINATION IN K-12 SCHOOLING”

Defines DEI in section 2(b) as “Discriminatory equity ideology” that treats individuals as members of preferred or disfavored groups, rather than as individuals, and minimizes agency, merit, and capability in favor of immoral generalizations including; race, color, sex, and national origin

Enforcement Mechanisms

- AG is to coordinate with state attorney generals to enforce the law
- Reestablishes the President’s 1776 Commission on Promoting Patriotic Education
- Promotes “Patriotic” Education

Next Steps

Within 90 days, ED, DOD, and HHS must work with the AG to issue an “Ending Indoctrination Strategy”

Intersection with Other EOs

Incorporates definitions from the Anti-Trans EO



ATHLETIC PARTICIPATION

Specifically targeting women and girls, these regulations do not apply to trans men/boys

The EO directs all agencies to rescind funding for programs that allow transgender girls to participate in girls' athletics or to use girls' locker rooms

Lawmakers consistently struggle to find local examples to support the need for these bills

There are sports associations in every state have policies in place to allow transgender youth to place in an equitable way



TITLE IX

Enforcement

Administrative Enforcement

Court Enforcement

School Enforcement



CAN THE PRESIDENT DO THIS?

Some of it yes - some no.



He can't overrule the Supreme Court about what a law means.

He can use the enforcement power of federal agencies to create confusion, change the way that lawyers calculate risk, and to try to convince people to follow the law as he wishes it were rather than the way it is.

He must comply with the U.S. Constitution & Federal Civil Rights Laws

Transgender people have statutory and constitutional protections regarding rights in the workplace, including in bathrooms. If he refuses to follow these, federal employees can sue.

He must comply with required administrative regulatory law

Many of the things in this order will take months or years to implement and will be subject to public comment. Litigation is also likely to occur.

Litigation

LGBTQ and allied organizations are challenging a broad range of EOs with more cases coming soon



Mahmoud v. Taylor

- Do religious parents have a right to opt the student out of any reference to LGBTQ people or issues in public schools

Education

- Trans Athlete Ban

Other Litigation

- Trans Military Ban
- Funding Freeze
- Housing of incarcerated trans people
- Passports
- Healthcare for transgender adolescents

Education Impacts

These executive orders and anti-equality messaging is hurting students, families, and educators in K-12+

- Immigration agents on school campuses
- Threats of critical federal funding
- Student athletes and state governing bodies
- College and university housing, facilities and
- Probes into schools and educators



HUMAN
RIGHTS
CAMPAIGN
FOUNDATION



WELCOMING
SCHOOLS



Denver Public Schools sues to stop Trump administration policy allowing ICE agents in schools



School Systems Across US Refuse to Comply With Anti-Trans Executive Order

Multiple school systems released advisories stating that Trump's order mandating discrimination will not be followed.

Action & Next Steps

- Check on LGBTQ+ youth - they need us right now
- Focus on what you **CAN** do
- Avoid early compliance - wait for district guidance
- Trust FERPA and PPRA (student privacy rights)
- Interrupt increased bias against LGBTQ+ and immigrant school communities



HUMAN
RIGHTS
CAMPAIGN
FOUNDATION



WELCOMING
SCHOOLS

Action & Next Steps

- **Work with school and district leadership and school boards to elevate their public commitments to LGBTQ+ inclusion and equity for all students.**
- Start and support GSAs! CDC identifies 3.3% or more than 850,000 trans students in high schools.
- Get involved in leadership positions - run for school board!



HUMAN
RIGHTS
CAMPAIGN
FOUNDATION



WELCOMING
SCHOOLS

Resources

- Facing the Future Together
- NEA
 - Immigration Guidance
 - Educator LGBTQ+ Rights
- HRC School Boards Matter Guide
- District Commitments to Students
- HRC Advocacy 101
- Workplace Inclusion

Questions?



HUMAN
RIGHTS
CAMPAIGN
FOUNDATION



Thank You

WelcomingSchools@hrc.org



HUMAN
RIGHTS
CAMPAIGN
FOUNDATION



WELCOMING
SCHOOLS