

Guidance on Discrimination and Indoctrination in Expressive-based Courses or Activities in Arkansas.

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Document Background

This document is in response to questions from members of the speech, debate, and acting community in Arkansas following the implementation of Act 237 of 2023 (Arkansas L.E.A.R.N.S. Act). It is not the intent of this document to oppose Arkansas law or help teachers of speech, debate, and acting circumvent the law. The document is intended to simply answer questions and make recommendations to the community of educators to ensure compliance with Arkansas law in these expressive-based courses & activities.

Concerns about specific areas of Arkansas law (e.g., indoctrination, parental consent, etc.) were shared in sessions at the Arkansas Communication & Theatre Arts Association (ACTAA) Summer Workshop, July 9-10, 2023, and Fall Conference, September 7-9, 2023. Based on advice from legal scholars and development from both sessions, the following guidance was prepared by Zackery Tucker, ACTAA 1st Vice President. This document is not endorsed by the association at-large, but makes recommendations developed from consensus from members in sessions. This document hopes to provide teachers of expressive-based courses or activities in Arkansas, particularly speech, debate, and acting, reference for questions about Arkansas law and discrimination & indoctrination.

Although ACTAA has not endorsed this document, ACTAA Board of Directors has adopted a statement on discrimination and indoctrination. As a position, ACTAA agrees with the Arkansas

Legislature that discrimination and indoctrination should not be tolerated in the classroom. Additionally, ACTAA believes nothing inherently in the activities of speech, debate, and acting is discriminatory or indoctrination.

This document is organized by referenced law in a frequently asked question (FAQ) style. In addition to answering questions, the document does include recommendations for both the classroom and tournaments & festivals to ensure compliance with Arkansas law.

For questions about the document, or to pose additional questions, please feel free to email Zackery Tucker at zacktucker89@gmail.com.

Indoctrination (A.C.A. § 6-16-156)

What is indoctrination?

A.C.A. § 6-16-156 (Arkansas L.E.A.R.N.S. Act) defines indoctrination as “communication by a public school employee, public school representative, or guest speaker that compels a person to adopt, affirm, or profess” an idea that is discriminatory as defined in the Civil Rights Act of 1964. This definition includes the instruction and training on Critical Race Theory. The definition does not include “ideas and the history of the concepts [described above:] or public policy issues of the day” and “related ideas that individuals may find unwelcome, disagreeable, or offensive.”

How do I ensure my instruction or activities are not indoctrination?

Do not compel a student to adopt, affirm, or profess an idea that is discriminatory.

Suggestion(s) to consider:

- *It is suggested that you demonstrate in your lesson planning how your instruction and learning outcomes support and are required by Arkansas Department of Education’s Arkansas Academic Standards for the course, and include disclosure to students, parents and administrators of your willingness to comply with the law.*
- *Consider adopting a syllabus or program handbook statement. An example syllabus or program handbook statement is provided in this document.*

What is an idea that is discriminatory?

The Civil Rights Act of 1964 states, “no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.”

In the Title VI Legal Manual prepared by the Civil Rights Division of the U.S. Department of Justice, discrimination is outlined in part as “causing an adverse action or harm for an individual based on their actual or perceived race, color, or national origin” (McDonnell-Douglas framework). There are “no bright-line rules” for defining discrimination. But derogatory comments and speech is not discrimination by itself, until the comments are “contemporaneous” with adverse action. However, A.C.A. § 6-16-156 expands the rights of protected classes to include the “idea” of an individual of a defined class to receive adverse treatment because of their defined class status.

A.C.A. § 6-16-156 expands that list of protected classes to include: “...creed,... ethnicity, sex, age, marital status, familial status, disability status, religion,... or any other characteristic protected by federal or state law.” Additionally, A.C.A. § 6-16-156 expands the McDonnell-Douglas framework to also include adopting, affirming, or professing the idea that one defined class is “inherently superior or inferior to people of another” defined class.

An idea that is discriminatory under A.C.A. § 6-16-156, would be a concept that justified providing adverse action or harm, or advocated that an individual or group is “inherently superior or inferior to another” individual or group, based on actual or perceive “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.”

Does the legal prohibition of indoctrination limit my classroom discussion?

No. A.C.A. § 6-16-156 (Arkansas L.E.A.R.N.S. Act) prohibits a public school employee from compelling a person to adopt, affirm, or profess an idea that is discriminatory. The law specifically allows for discussion on “ideas and the history of the concepts of [discrimination],” “public policy issues of the day,” and “related ideas that individuals may find unwelcome, disagreeable, or offensive.”

It is in the nature of debate, forensics, acting, and public speaking as a discipline, and required by Arkansas Academic Standards as courses, to teach concepts and skills of critical thinking, interpersonal effectiveness, leadership, collaborative work, problem solving, and self-efficacy through discussion, argumentation, research, and performances.

Additionally, nothing in Arkansas law limits student discussion or expressive activities, only public school employees from compelling a person to adopt, affirm, or profess an idea that is discriminatory.

Should I be concerned about student-led or guided discussion or research on topics that might be considered controversial?

No. A.C.A. § 6-16-156 (Arkansas L.E.A.R.N.S. Act) specifically allows for discussion on “public policy issues of the day” and “related ideas that individuals may find unwelcome, disagreeable, or offensive.” However, the classroom should be an environment of learning that is welcoming

and develops a sense of support and belongingness, being aware of student comfortability and needs has always been an ethical standard for teaching.

Additionally, A.C.A. § 6-16-156 only prohibits public school employees from certain instruction and activities, not students. Student-led discussions, research, or performances are not prohibited by the law.

Suggestion(s) to consider:

- *As an employee of your local public school, you should be aware of any local policies or practices that might be in place by your local administration that might intersect with the state law (i.e., parental consent, further prohibition of topics, etc.)*

Under the law, can a judge be “indoctrinated” in a debate round by being compelled to vote for a particular side of the debate to select a winner?

No. Although the student competitors will most likely compel the judge to affirm their arguments, A.C.A. § 6-16-156 only prohibits public school employees from compelling a person to adopt, affirm, or profess an idea that is discriminatory, not students. The law permits students to compel other students and students to compel educators or adults.

Additionally, the law specifically permits discussion on “ideas and the history of the concepts of [discrimination],” “public policy issues of the day,” and “related ideas that individuals may find unwelcome, disagreeable, or offensive.”

Since student debaters advocating for a particular position on a topic in the context of an educational debate would include “ideas and the history of the concepts of [discrimination],” “public policy issues of the day,” and a student is not being compelled to adopt, affirm, or profess an idea that is discriminatory, a traditional educational debate round would not be indoctrination.

Child sexual abuse instruction (A.C.A. § 6-16-157)

Act 237 of 2023 (Arkansas L.E.A.R.N.S. Act) added the public school instruction of “(1) sexually explicit materials; (2) sexual reproduction; (3) sexual intercourse; (4) gender identity; or (5) sexual orientation” to students “before grade five (5)” as a violation of the state’s child sexual abuse law.

However, related topics required in Arkansas Academic Standards (i.e., sex education, sexual orientation, and gender identity) are permitted after grade five with parental consent.

Parental notice and consent (A.C.A. § 6-16-1006)

Act 552 of 2021 requires parental notification before the instruction of topics broadly related to “sex education, sexual orientation, and gender identity.” Additionally, the law requires public schools to allow for parental inspection of related materials upon request, and the ability for parents to request their student be excused from participation in instruction or activities that relate to the discussion of said topics.

What is included as instruction under this law?

A.C.A. § 6-16-1006 defines instruction in the broadest terms including, “curricula, materials, tests, surveys, questionnaires, activities, and instruction of any kind.”

Does the law require parental consent each time the subject matter is planned to occur in instruction?

No. A.C.A. § 6-16-1006 only requires written notification to parents and a method of confirming receipt of said notification.

Additionally, the law specifically allows “responding to questions posed by a student during class regarding sex education, sexual orientation, or gender identity as it relates to a topic of instruction; or referring to the sexual orientation or gender identity of a historical person, group, or public figure when such information provides necessary context in relation to a topic of instruction.”

Suggestion(s) to consider:

- *It is suggested that if a teacher knows that the concepts of “sex education, sexual orientation, and gender identity” will be discussed in a course, no matter if the topics are to be presented in a historical, public policy or social context, that a notification be presented to parents at the start of the course. Additionally, as an employee of your local public school, you should be aware of any local policies or practices that might be in place by your local administration that might intersect with the state law (i.e., parental consent, further prohibition of topics, etc.)*
- *Consider adopting a syllabus or program handbook statement. An example syllabus or program handbook statement is provided in this document.*
- *Although not required by the law, teachers might consider submitting individual event scripts, speeches, and debate briefs to parents for approval and consent for their students to perform the materials. This would ensure parental consent on core content their student would be reviewing the most in the course or program.*

How do I handle inspection of materials by parents?

Consult your local administration on any specific policy or procedure on retaining materials. A.C.A. § 6-16-1006 requires public schools to develop a process for parental inspection of materials.

Suggestion(s) to consider:

- *It is suggested that you keep any materials (i.e., literature, handouts, scripts, research, etc.) shared in class with students that might broadly include the topics of “sex education, sexual orientation, and gender identity.” Arkansas law requires the inspection of these materials by parents upon request, which implies their retention.*

Can one parental request require me to remove materials from my class?

No. A.C.A. § 6-16-1006 only requires public schools to allow a student to be excused from participating in any or all portions of instruction or activities related to the topics of “sex education, sexual orientation, or gender identity” upon written request from the student’s parent.

Suggestion(s) to consider:

- *As an employee of your local public school, you should be aware of any local policies or practices that might be in place by your local administration that might intersect with the state law (i.e., parental consent, further prohibition of topics, etc.). Your administration may require you to remove materials from the classroom.*

Example syllabus or program handbook statement.

Discrimination or indoctrination in any form will not be tolerated in this course.

As an educational activity, at no point should a student feel compelled to adopt, affirm, or profess an idea that is discriminatory (as defined in the Civil Rights Act of 1964). It is in the nature of [insert discipline] to provide a curriculum based environment that promotes the self-expression of student-developed ideas, criticism and discussion of, and engagement in, society through the widest range of topics. In this course, students will be exposed to concepts and topics in an educational context, whether historical, public policy or societal, including contrasting perspectives of ideas, the history of the concepts, and public policy issues of the day (e.g., topics of race, ethnicity, religion, sex, politics, etc.) as appropriate through literature analysis, argumentation, research, and performances to develop and promote critical thinking skills, interpersonal effectiveness, leadership, collaborative work, problem solving, and self-efficacy, as directed by the Arkansas Department of Education in academic standards.

In compliance with A.C.A. § 6-16-156, students and parents should know, although this course fosters an environment of learning that is welcoming and develops a sense of support and belongingness, the discussion of ideas that individuals may find unwelcome, disagreeable or offensive is not simply indoctrination, but a natural element of facilitating independent thinking and self-thought, skills required by Arkansas Academic Standards to be learned in this course.”

Considerations for interscholastic events (i.e., festivals, tournaments, etc.)

Since the law does not limit the prohibition of discrimination and indoctrination from a public school employee to their assigned students, but any public school employee discriminating or indoctrinating any students in the state, it is important that practices are established as community of educators that take students to interscholastic events.

Preparing for a tournament or festival.

Parental notice and consent.

It is important that teachers traveling with students to interscholastic events (i.e., festivals, tournaments, etc.) include disclosure to parents about content that will not only be reviewed in the teacher’s classroom or program, but content their student may encounter that will be discussed or performed by other students from other schools while at interscholastic events.

It is suggested that teachers traveling with students to interscholastic events adopt a program or course policy that allows their students to excuse themselves from participating or watching a debate, speech, or performance at a tournament or festival that they have been directed by their parents to avoid participating in without penalty in their program or course. (e.g., grade reduction for forfeiting a round due to topic, judging a student for stepping out of a round to avoid watching a student perform a piece that includes a topic of concern, etc.)

It is recommended that the policy developed is clearly communicated to students and parents in writing.

Disclosure and content advisory.

To ensure every student is provided the opportunity to excuse themselves from participating or watching a debate, speech, or performance at a tournament or festival based on parental direction to avoid particular content, it is recommended that a culture of disclosure is developed amongst all programs and all students participating in competitive debate, speech, or acting.

Providing trigger warnings before speeches and performances that might contain references or interpretations of trauma has been common practice in the competitive speech, debate, and

acting communities nation-wide for a decade or longer. Trigger warnings are used to prepare participants and observers before potentially upsetting or sensitive content/themes are discussed, debated, or performed.

Normalizing advisories.

The terminology “trigger warning” or “flags” can imply the content that follows is in some fashion inappropriate or unacceptable. When in reality the expression or discussion of concepts and topics in an educational context, whether historical, public policy or societal, even when the conversation is uncomfortable, is critical to student learning, and required by academic standards. In an effort to normalize trigger warnings in the community, it is recommended they are referred to as “content advisories.”

Additionally, it is suggested that this similar practice is practiced for all debates, speeches, and performances no matter the topic, theme, subject, etc. Whether the piece contains themes of friendship and leadership, or the prepared debate brief references socioeconomic realities of people of color in America, no matter the content, no matter the topic, no matter the references, normalizing content advisories at the start of each debate, speech, and performance will ensure advisories appear natural and acceptable for judges and competitors alike.

Preparing advisories with fidelity.

Like all things in an educational environment, content advisories should be earnest and disclose referenced topics, themes, subjects, etc. to audience members with fidelity and the audiences’ needs and concerns in mind. Students should be coached in preparing content advisories that are professional and properly consider their potential audiences’ mental health needs and the rights of their parent’s concerns under the law.

Time for the audience to react.

Although, content advisories have been common practice in the competitive speech, debate, and acting communities nation-wide, not all students share advisories with fidelity when providing time for the audience to react to the disclosure. Students should not simply recite a prepared advisory and immediately begin performing their prepared piece or speech. Audience members will most likely not feel comfortable leaving the room during the performance or speech, and unnecessarily subject themselves to the content in order to avoid appearing inconsiderate or rude to the performer, speaker, or judge. It is recommended students leave a ten (10) to fifteen (15) second pause between the disclosure and starting the prepared performance or speech.

Example content advisory:

“Good morning. Thank you for the opportunity to tell the story of Johnathan and his friends today. This piece contains references to abuse and a tragic car accident. If you

are concerned about the subjects expressed in this piece, please feel free to use the next ten seconds to excuse yourself from the room.”

[Student silently counts ten (10) seconds.]

“Judges and timekeeper ready?”

[After affirmative acknowledgement from the judge and timekeeper, the student begins prepared performance.]

Preparing Adjudicators.

In every round of speech, debate, and acting, no matter the format, the judge is the individual with most influence and thus the individual who should example leadership in the competition room. Although in the majority of cases the adjudicator is an Arkansas public educator, there are occasions that high school alumni, qualified interested members of the public, private in-state educators, and out-of-state educators are invited by schools to serve as judges at tournaments and festivals.

As a result, tournament and festival directors must ensure that guest judges are informed of any tournament policies or practices adopted by the tournament or festival related to laws of discrimination & indoctrination and community norms in Arkansas.

Content Advisories.

Simply coaching students to recite content advisories will not be fully effective, tournament and festival directors must educate judges about the practice of content advisories before every piece and speech. Judges must be informed of the expectation of students to excuse themselves from rounds after content advisories, and the expectation students should be ranked and evaluated based on their performance and argumentation, not penalized for excusing themselves from a competition room for a period of time to avoid content potentially protected under the law. Judges must ensure students do not feel embarrassed or out-of-place by giving content advisories, or excusing themselves from a competition room because of a content advisory.

Additionally, tournament and festival directors should provide content advisories for performances and debate & speech topics to judges before the judges agree to adjudicate a particular round. Although adult judges are not protected in Arkansas law from potential indoctrination, judges might be adversely affected by content of pieces notwithstanding Arkansas Law.

As a result, tournament and festival directors should ask coaches submitting student entries to list or identify content advisories for each speech, piece, and debate brief so tournament and

festival directors may inform judges of potential content and judges can be provided the opportunity to excuse themselves from adjudicating a particular round.

Ballots and Reason for Decision.

Although nothing in competitive speech, debate, or acting is inherently indoctrination, as Arkansas law specifically allows for discussion on “public policy issues of the day” and “related ideas that individuals may find unwelcome, disagreeable, or offensive,” parents and students might come to conclusions while interpreting judges reasons of decision that might bring them to be concerned.

As the majority of adjudicators are Arkansas public educators, it is important that educators that are not directly instructing students are aware of the potential of indoctrination indirectly while judging acting, speech, and debate rounds. Selecting a winner of a round that included a particular position on a topic might indirectly make a student feel compelled to affirm or profess an idea that is discriminatory in a future round.

Judges are advised to provide detailed reasons for decision, communicating with the student the decision making process ensuring the student does not indirectly develop conclusions that might be compelled to affirm or profess discriminatory ideas in the future. Judges might be advised to include a statement in their reason of decision outlining a clarification of their intent to avoid indoctrination.

Example reason for decision language. “My decision nor anything in my provided reason for decision is intended to make any student compelled to adopt, affirm, or profess an idea that is discriminatory in nature.”

Additionally, tournament and festival directors should consider adding language to ballots directing judges to avoid indoctrination in the round.

Example ballot language. “As an educational activity, at no point should a student feel compelled to adopt, affirm, or profess an idea that is discriminatory. Judges' decisions and communicated reasons for decision should be based on performance, skill, and argumentation.”