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ByBRUCE SCHREINER Associated Press

June 8, 2023, 6:01 PM

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The measure's top Republican sponsor pushed back this week over how the Kentucky Department of Education has interpreted the provisions in offering guidance to school districts statewide.

It's part of a far-reaching measure passed this year to regulate some of the most personal aspects of life for transgender youth in Kentucky — from banning access to gender-affirming [health care](#) to restricting the bathrooms they can use at school. The ban on gender-affirming care has drawn a court challenge.

The latest dispute boils down to a single word choice by lawmakers. They used “or” rather than “and” in the sex education section — leading to big implications over how it's interpreted.

As a result, districts can choose one of two bans in the section, according to the guidance. Districts can choose between prohibiting all mention of gender identity and sexual orientation across all grades or waiting to discuss human sexuality until sixth grade, education department officials said.

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FILE - Supporters of Senate bill 150, known as the Transgender Health Bill gather in the Rotunda of the Kentucky State Capitol as protesters look on from the balcony on March 29, 2023, in Frankfort... The Associated Press

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That's not what lawmakers intended, Republican state Sen. Max Wise said Wednesday, calling it an “absurd” interpretation and a “feeble attempt to undermine” the measure.

Supporters wanted the law to do both things, he said.

"Obviously, the legislature would not pose these two requirements, which protect children and protect parental rights, as a binary choice for school systems to select to enforce," Wise said in a statement.

Kentucky's Republican-dominated legislature concluded its 2023 session in late March and won't convene again in regular session until early next year.

The education department said its updated guidance, released Monday, was in response to requests from school districts seeking additional guidance and “technical assistance” related to the law.

As for the new dispute, department spokesperson Toni Konz Tatman said: “The Kentucky General Assembly chose to use the conjunction “or” not “and.” When it comes to state law, words have meaning and KDE simply read the words adopted by the General Assembly.”

In its guidance, the department said that section of the new law “presents districts with a choice.” If districts choose to enact the K-5 ban on discussing human sexuality, they would be able to offer instruction related to gender identity and sexual orientation, it said.

“Under this scenario, instruction on curriculum for human sexuality or sexually transmitted diseases at the high school level would not be impacted,” the guidance said.

Wise said it was clear what lawmakers intended. He pointed to a court ruling stating “an interpretation (of a statute) which will lead to an absurd result will be avoided,” and “when necessary to carry out the obvious intention of the Legislature, disjunctive words can be construed as conjunctive, and vice versa.”

The measure's final version passed late in the legislative session. It's part of a national movement, with lawmakers in red states approving extensive measures to restrict the rights of LGBTQ+ people — from bills targeting trans athletes and drag performers to measures limiting gender-affirming care.

Asked to respond to the latest dispute over the Kentucky measure, Democratic Gov. Andy Beshear faulted GOP lawmakers for a rushed process in passing it.

“We have a phrase — ‘the letter of the law’ — for a reason,” the governor said Thursday at his weekly news conference. “It's what's on paper that they pass. It's a statute that's put in the books. And we have to follow that, and not just what's in somebody's head or what they meant.”

Beshear added: “My bet is that there is more than just that one mistake in that bill.”

The measure was passed over Beshear's veto by the legislature's GOP supermajorities. In his veto message, the governor said the bill allowed “too much government interference in personal healthcare issues and rips away the freedom of parents to make medical decisions for their children.”

Beshear is seeking reelection to a second term in this year's [elections](#) in Kentucky. His Republican opponent, Attorney General Daniel Cameron, is trying to connect Beshear to a “gender ideology curriculum” that Cameron says is “making its way” into classrooms, drawing on a national GOP theme. Cameron has repeatedly criticized the state education commissioner, who runs day-to-day operations in the education department. The commissioner is chosen by the state board of education, whose members are appointed by the governor and confirmed by the Senate.

Last month, several families challenged Kentucky’s ban on gender-affirming care for transgender youth. The federal lawsuit challenges sections that would ban puberty blockers and hormone therapy for trans youth. The suit didn’t take aim at other sections dealing with school bathroom policies, guidance for teachers regarding student pronouns and rules on teaching about gender identity and sexual orientation.