



Safe Schools for Everyone!



What Educators Should Know About Lgbtq+ Rights

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In the landmark 2020 *Bostock v. Clayton County* case, the Supreme Court held that federal law prohibitions against discrimination on the basis of sex necessarily prohibit discrimination on the basis of gender identity or sexual orientation. The Biden administration has followed this interpretation, as it must, in enforcing other civil rights laws, including those that protect students and educators from discrimination on the basis of sex, including gender identity or sexual orientation. At the same time, Republican-led state legislatures have passed an unprecedented number of bills attacking the LGBTQ+ community, and transgender youth in particular. Because federal law supersedes state law to the contrary, these new state laws often run directly foul of federal civil rights laws enforced by the U.S. Department of Education (USED) and the U.S. Department of Justice (DOJ). This guidance answers some FAQs about federal protections for public school students and employees, the threats posted by state legislation, and resources to create an inclusive environment for LGBTQ+ students.

What protections do I have as a public school employee?

- Public school employees are protected under Title VII of the Civil Rights Act (Title VII), which prohibits discrimination against employees based on numerous characteristics, including sex, inclusive of gender identity and sexual orientation. This means that employers cannot consider an employee's sexual orientation or gender identity when deciding who to hire, fire, or promote, or in assigning responsibilities, setting salary, providing benefits, or determining any other significant aspect of employment. Employers also cannot harass employees based on their LGBTQ+ status or allow others to create a hostile work environment for LGBTQ+ employees.
- Following the *Bostock* decision, federal agencies and other courts determined that Title IX of the Education Amendments of 1972 (Title IX), which prohibits

sex discrimination in schools, also prohibits discrimination based on sexual orientation or gender identity. Like Title VII, Title IX prohibits employment discrimination, including sexual harassment, but also protects against forms of discrimination not specifically included in Title VII (such as discrimination in fringe benefits; selection and financial support for training and conferences; employer-sponsored activities, including those that are social or recreational; and leave related to pregnancy, childbirth and termination of pregnancy).¹

- There may also be laws in your state that protect against LGBTQ+ discrimination. You can check the status of laws in your state [here](#). If you belong to a union, you may also have recourse under a grievance procedure in your collective bargaining agreement, but if you want to enforce your rights under state or federal law, you will still need to file a complaint with the appropriate state or federal agency (see below).

How do I file a complaint about employment discrimination or harassment?

- If you believe you have been discriminated against or harassed based on your LGBTQ+ status, you may file a complaint with the [Equal Employment Opportunity Commission](#) (EEOC) or the [U.S. Dep't of Education's Office of Civil Rights](#) (OCR).
- Filing a Title VII complaint with EEOC: There are strict filing deadlines of either 180 or 300 days (depending on the state) from the time of the discriminatory incident to the time when you must file a charge with the EEOC.
 - Many states and local jurisdictions have their own agencies that enforce non-discrimination laws. Claims filed with these agencies are automatically "cross-filed" with the EEOC.
 - A list of EEOC offices, searchable by zip code, can be [found here](#).
 - A list of state agencies can be found [here](#).

¹ [34 CFR § 106.51\(b\)](#)

- Filing a Title IX complaint with USED OCR: Because public school employees are also protected from sex discrimination under Title IX, employment discrimination complaints can also be filed with USED OCR, although they will often be referred to the EEOC to handle.
 - OCR has instructions available in [English](#) and [numerous other languages](#).
- Documenting Discrimination and Harassment: You will need to provide specific details about discriminatory or harassing conduct and keep records to support a claim:
 - Make notes of incidents, including time, location, details, and any witnesses.
 - Record and document with a follow-up email any reports you make to the employer.
 - Note the ways in which discriminatory actions impact your work and other aspects of your life.
- Dress Codes—Where schools have gender-specific dress codes, schools cannot prevent transgender students from following the dress code rules that match their gender identity. NEA urges school districts to adopt gender neutral and inclusive dress codes.
- Bathrooms & Other Facilities— Schools may not prevent students from using the bathrooms or locker rooms that match their gender identity.

- Title IX also prohibits anti-LGBTQ+ harassment and bullying. Harassment can consist of offensive comments, gestures, and physical acts of a sexual nature, or can be non-sexual but related to sex (including sexual orientation or gender identity), by school staff or other students. Failure to treat students consistent with their gender identity, including repeated failure to use the student's correct pronouns, can be a form of harassment.
- If the school is aware that a student or students are experiencing harassment that is so frequent and severe that it prevents them from participating in school activities, the school is required by federal law to take steps to prevent it.
- You can report a Title IX violation to USED OCR, [here](#), or to the DOJ, [here](#).
- Students also have free speech rights at school. Generally, schools cannot censor student speech unless there is reason to think that it will substantially disrupt school activities or infringe others' rights. That means students should be allowed to wear or display Pride gear and speak out about LGBTQ+ issues.
- Under the Equal Access Act, students in secondary schools also have the right to form GSAs (Gay-Straight Alliances or Gender-Sexuality Alliances), so long as the school authorizes any other extracurricular student groups and the group is student-initiated. Schools cannot single out GSAs for extra restrictions or prevent them from using school bulletin boards, making announcements, hosting

What protections do my students have?

- Title IX prohibits discrimination against students based on their sexual orientation or gender identity. The USED and DOJ recently published [guidance](#) on confronting anti-LGBTQ+ discrimination and harassment in schools.
- Because of Title IX's protections, schools cannot discriminate in:
 - Extracurricular Activities—Schools may not exclude students from school activities, including schools clubs, student office, and field trips based on the students' sexual orientation or transgender status.
 - School Sports—Schools may not prevent transgender students from participating in athletic contests on teams that match their gender identity. (As discussed below, some states have passed laws banning transgender participation in school sports, but litigation challenging those laws has been successful so far.)

fundraisers, or engaging in other activities that the school allows other extracurricular groups to do.

How can I advocate for my LGBTQ+ students?

- As employees, educators' free speech rights are more limited than those of students. You have the strongest protections when you are speaking off school time as private citizens on matters of public concern. That means that educators generally have the right to advocate for the rights of their LGBTQ+ students when they are off duty, for example, by attending a protest or a school board meeting.
- But when educators are performing their duties as school employees, school districts have the right to set policies around what teachers say in the classroom, what curriculum to use, and what to display.
- Talk to your principal about the importance of making sure that all students, including your LGBTQ+ students, feel seen and supported in your school and classroom and ways that the school can make sure this happens. Acting together with other educators and involving your union can greatly strengthen your advocacy for inclusive classrooms, school practices and curriculum.

What is happening with the state backlash?²

- Despite the clear and strong protections against discrimination based on sexual orientation or gender identity under federal law, many states have passed laws targeting LGBTQ+ people and attempting to restrict the rights of LGBTQ+ students, families, and educators. Although these laws are unconstitutional and violate federal civil rights laws, and those that have been challenged have been struck down, some state politicians continue to push these laws to further their own political agendas.
- As of May 2022, 15 states have enacted laws preventing transgender youth from participating on sports teams that align with their gender identity, and many other states are considering similar legislation. These laws directly conflict with federal laws,

including Title IX and the Equal Protection Clause of the Constitution. Brave student-athletes across the country have challenged these laws in court, and have mostly been successful.

- At least 15 states have enacted or are considering bans on minors receiving gender affirming care. In order to prevent youth from receiving the care they need, these laws make it illegal for medical professionals or parents to provide youth with gender affirming care. Like the trans-sports bans, these laws violate federal law. LGBTQ+ advocates have had success challenging these laws in court.
- More recently, states have passed laws that attempt to erase LGBTQ+ history and communities from the curriculum, including Florida's Don't Say Gay or Trans law³ and measures to ban books. Advocates have already challenged the Florida law, arguing that it is unconstitutional and violates Title VII and Title IX by forcing LGBTQ+ educators to hide their identities and by excluding LGBTQ+ students and students with LGBTQ+ families from participating fully in class discussions.
- Tracking of state laws can be found [here](#) and [here](#).

How can I support my students in the classroom?

- We know that inclusive curriculum and pedagogical approaches are vital for LGBTQ+ students to thrive at school. In most states and districts, there are no specific policies prohibiting educators from implementing a more inclusive curriculum, so talk to your school principal about the importance of doing so. GLSEN and other organizations have great [resources](#) for developing a more inclusive curriculum.
- Sponsor a GSA. GSAs should be student-initiated, but will often need a faculty sponsor. Sponsoring a GSA can help students know that you support them and are a safe person to talk to.
- Consider posting LGBTQ+ Pride, Safe Space stickers, or other markers of inclusion. If you have not seen others posting similar items in their classroom, make sure to tell your principal in advance so that

² For more information about state laws specifically, check out NEA's memo, [What You Need to Know About State Laws Attacking Transgender Youth](#)

³ For more information on Florida's law, check out [NEA's Fact Sheet](#).

you can address any concerns they may have.

If your principal or another school administrator prohibits you from posting such inclusive posters, consult your union representative about how best to proceed. Posting overtly political materials in your classroom without clear authorization to do so may result in disciplinary action.

- Respect a student's request to use their preferred pronouns or a name that is different from their legal name. Consider asking all students at the beginning of the school year to indicate how they would like to be referred to, including any nickname or preferred name, so that transgender or gender non-binary students will not feel singled out. Affirming your students' identities is extremely important and valuable. Repeated failure to respect a student's preferred pronouns or chosen name may constitute harassment under Title IX.
- If a student is being harassed by other students, report it to your principal and the school's Title IX coordinator. Students and parents/guardians can also be advised of their rights to file a Title IX complaint for discrimination or harassment at school or school-related activities. School policies or practices that are having harmful effects on LGBTQ+ students can also be reported as possible Title IX violations.
 - OCR has instructions for filing complaints in [English](#) and [numerous other languages](#).
 - Document any adverse effects of school policies or practices that exclude, marginalize or threaten LGBTQ+ students. Information about ways that students are impacted in their ability to engage or participate in educational activities can be helpful in a Title IX investigation.

Can I be punished for speaking out?

- Title VII, Title IX, and the First Amendment all prohibit retaliation against educators for expressing their support of students, complaining about discriminatory or harassing conduct aimed at them, other employees, or their students, or filing a complaint with the EEOC or USED OCR.
- Collective bargaining agreements and due process protections under state laws and tenure rights are also important sources of protection if you are disciplined for exercising legally protected rights.
- If you believe you have been retaliated against for speaking out about your rights or those of your students, contact your union and consider filing a claim with the EEOC and/or USED OCR.

Where can I go for more information on this issue?

- USED OCR has also collected [resources for LGBTQI+ Students](#) in one place.
- NEA
 - [Bostock and Student Rights](#)
 - [Bostock and Educator Rights](#)
 - [Harassment and Discrimination Toolkit](#)
 - [Title IX Public Hearing Testimony \(Sexual Harassment and LGBTQ Discrimination\)](#)

