



AN OVERVIEW OF LAWS & POLICIES THAT SUPPORT SAFE AND WELCOMING SCHOOLS

This document is meant to provide an overview of supporting laws and policies that help to create safe and welcoming schools. Appropriate policies, in combination with inclusive programming and training, can provide administrators and educators with the tools to provide safe, welcoming, and respectful schools for all students.

Federal Protections

Federal Laws

Federal laws, passed by Congress and signed by the President, apply to every state and public school district, regardless of the presence or absence of state-level protections. These laws provide the floor for protections for educators and students – state and school districts may build from this base by providing additional protections or adding classes of students to be protect-ed. Federal laws are generally enforced by federal agencies, such as the U.S. Department of Education, detailed in the next section.

The Civil Rights Act of 1964

The Civil Rights Act of 1964¹ is landmark legislation, passed during the Civil Rights Era, that prohibits discrimination in several areas, including public spaces, employment, and education on the basis of characteristics including of race, color, religion, sex, or national origin. The statute is broken into several titles, including:

Title IV

This title prohibits discrimination on the basis of race, color, religion, sex, and national origin by public elementary and secondary schools and public institutions of higher learning. The remedy for discrimination under this title is desegregation. Deliberate segregation on the basis of race, color, and national origin was later prohibited by the Equal Education Opportunities Act of 1974².

Title VI

This title prohibits discrimination on the basis of race, color, and national origin by entities accepting federal funds. All public and private schools that receive money from the federal government are prohibited from discrimination by this law.

Title VII

Title VII prohibits employment practices that discriminate because of race, color, religion, sex, and national origin. Schools are covered employers under this law. This title was later amended to prohibit discrimination on the basis of pregnancy. Additional laws prohibit employment discrimination on the basis of age and disability. Courts and federal agencies have made clear that sexual harassment³ and sex-based stereotyping⁴ are prohibited under this title. More recently, federal agencies and some federal courts have recognized that sexual orientation, gender identity, and transgender status are protected under this title⁵.

¹ 78 Stat. 241 et seq., enacted July 2, 1964.

² 20 U.S.C. §§ 1701 et seq., enacted August 21, 1974.

³ Meritor Savings Bank v. Vinson, 477 U.S. 57 (1986).

⁴ Price Waterhouse v. Hopkins, 490 U.S. 228 (1989).

⁵ Baldwin v. Fox, EEOC Appeal No. 0120133080, 2015 WL 4397641 (July 16, 2015), and Macy v. Holder, EEOC Appeal No. 0120120821 (April 20, 2012).



Special Education Law and Transgender Youth

The IDEA and Section 504 of the Rehabilitation Act are the two main statutes that make up special education law. The level of services and accommodations a school must provide are generally more expansive under IDEA than under Section 504, but a student must be experiencing more significant difficulties in school in order to qualify under this law. Although transgender students cannot qualify for special education laws based on their transgender status or gender identity, they may be eligible because of the anxiety, depression, and other health related symptoms that may be caused as a result of not having their gender identity affirmed.

By providing supports, services, and accommodations, special education laws may be employed to expand a transgender student's future opportunities by helping the student to overcome difficulties in school relating to their transition and educational needs. Accommodations may include use of the student's chosen name and access to the appropriate restroom. Even when the school is fully supportive of a transgender student, having an IEP or Section 504 Plan in place can help ensure that the student maintains that level of support through potential changes in their school or district administration, or if the student has to move to another school or district.

Title IX of the Education Amendments of 1972

Title IX of the Education Amendments of 1972⁶ prohibits any school or institution of higher education that receives federal financial assistance from limiting or denying a student's participation in any school program on the basis of sex. Courts and agencies have frequently interpreted Title IX in accordance with Title VII of the Civil Rights Act of 1964, and therefore Title IX should be understood to prohibit discrimination, including sexual harassment, based on sex stereotypes, sexual orientation, and gender identity or transgender status.

Discrimination on the Basis of Disability

There are three key federal laws that prohibit discrimination on the basis of disability applicable to education settings.

Section 504 of the Rehabilitation Act of 1973

The Rehabilitation Act of 1973⁷ extended federal civil rights to qualified people with disabilities. Section 504 of this Act prohibits discrimination against children and adults in areas such as education and employment, for programs and activities that receive federal funding.

Americans with Disabilities Act

The Americans with Disabilities Act (ADA)⁸ prohibits discrimination on the basis of disability for qualified individuals, creating protections similar to those created by the Civil Rights Act of 1964 for other characteristics. The ADA applies to both mental and physical disabilities, although it specifically excludes transgender status from the definition of disability. The ADA prohibits discrimination based on disability in areas like employment, government services (like schools), and public accommodations. It also creates requirements for reasonable accommodations for people with disabilities and accessibility requirements.

Individuals with Disabilities Education Act

The Individuals with Disabilities Education Act (IDEA)⁹ is a law intended to ensure that students with disabilities are provided with public education tailored to their needs. The law requires school districts to create an Individualized Education Program (IEP) for students with disabilities, which specifies services the student is to receive and appropriate accommodations.

⁶ 20 U.S.C. §§ 1681-1688, enacted June 23, 1972.

⁷ 29 U.S.C. §§ 701 et seq., enacted September 26, 1973.

⁸ 42 U.S.C. §§ 12101 et seq., enacted July 26, 1990.

⁹ 20 U.S.C. §§ 1400 et seq., enacted October 30, 1990.



Equal Access Act

The Equal Access Act¹⁰ requires federally funded schools to grant equal access to extracurricular clubs. If a school allows at least one student-led non-curricular club, it must allow additional such clubs to be organized and provide them equal access to meeting space and publications. This law requires schools to allow Gay-Straight Alliances and other supportive student organizations on the same basis as other extracurricular clubs.

STUDENTS' RIGHT TO PRIVACY

Students retain a right to privacy while in a school environment, based on both federal statutory law and the U.S. Constitution. Circuit Courts have applied Fourteenth Amendment privacy protections to prevent the release of highly personal information, such as sexual orientation.¹¹ Schools have followed suit, recognizing a right to student privacy that is balanced against a proper government interest.¹² In addition, the U.S. Supreme Court had made clear that students retain Fourth Amendment protections against unreasonable search and seizure, although a lower level of suspicion is required as compared to the general population.¹³ Finally, the Family Educational Rights and Privacy Act (FERPA)¹⁴ prohibits the improper disclosure of personally identifiable information (PII) from students' records.

With regard to LGBTQ students, information relating to sexual orientation or gender identity may constitute PII as an indirect identifier,¹⁵ and therefore school officials should use caution and follow FERPA disclosure guidelines prior to release of such information. Moreover, the disclosure or misuse of such information may establish a hostile educational environment for students, subjecting them to harassment by peers or even discrimination by school staff. School officials may think they are doing the right thing by revealing a student's sexual orientation or gender identity to their parents. However, doing so not only violates the student's privacy rights, but can negatively impact a young person's life. Young people whose schools have "outed" them to their families often report subsequent rejection or abuse at home.

Just under half (44%) of LGBTQ youth say they are not out to their immediate family. Less than a third of LGBTQ youth (32%) chose their family among a list of places where they most often hear positive messages about being LGBTQ; nearly half (46%) chose their family among a list of places where they most often hear negative messages about being LGBTQ.¹⁶

Family Educational Rights and Privacy Act

The Family Educational Rights and Privacy Act (FERPA),¹⁷ which applies to all schools that receive federal funding, prohibits the improper disclosure of personally identifiable information derived from education records. It also gives parents access to their child's records, allows for records to be amended, and requires parental or student consent prior to disclosure of records. Information that school staff obtained through personal knowledge or observation, or has heard orally from others, is not protected under FERPA. This means that a school cannot share a student's sexual orientation or gender identity with others if they have learned about it from education records.

¹⁰ 20 U.S.C. § 4071, enacted August 11, 1984.

¹¹ *Sterling v. Borough of Minersville*, 232 F.3d 190 (3rd Cir. 2000).

¹² See, e.g., *Nguon v. Wolf*, 517 F. Supp. 2d 1177 (C.D. Cal. 2007).

¹³ *Safford United School District v. Redding*, 557 U.S. 364 (2009).

¹⁴ 20 U.S.C. § 1232g, enacted August 21, 1974.

¹⁵ 34 C.F.R. § 99.3.

¹⁶ *Growing Up LGBT in America* (2012) Human Rights Campaign Foundation, available at: http://hrc-assets.s3-website-us-east-1.amazonaws.com/files/assets/resources/Growing-Up-LGBT-in-America_Report.pdf.

¹⁷ 20 U.S.C. § 1232g, enacted August 21, 1974.



U.S. Constitution

Several provisions of the U.S. Constitution may impact school safety and inclusion. Public schools are governmental entities required to comply with the U.S. Constitution.

First Amendment

Students retain their First Amendment freedom of speech while attending public school. The U.S. Supreme Court has established a standard for such speech, making clear that schools may not restrain student speech unless it will reasonably substantially disrupt of the school environment or harm others.¹⁸ Freedom of speech has important implications for LGBTQ (lesbian, gay, bisexual, transgender, and queer and/or questioning) students and families. For example, schools cannot prevent students from expressing their identity or discussing same-sex families. Freedom of expression also permits students to have same-sex prom dates and wear prom attire consistent with their gender identity.

The Establishment Clause of the First Amendment prevents government (including public schools) from unduly supporting religion or favoring one religion. The U.S. Supreme Court has made clear that this prevents school districts from conducting school-sponsored prayer,¹⁹ posting religious texts,²⁰ or teaching religious lessons.²¹ These protections are relevant because religion has been used to justify discrimination against LGBTQ students and their families.

Finally, the First Amendment prevents school districts from censoring or removing books from school libraries based on their viewpoint. After a school board removed 9 books from a school library, students and parents challenged the decision. In the majority opinion, Supreme Court Justice William Brennan wrote, "Local school boards may not remove books from school library shelves simply because they dislike the ideas contained in those books."²² This case is frequently cited in challenges to books in school, including books about LGBTQ people and their families.

Equal Protection Clause of the Fourteenth Amendment

The Fourteenth Amendment guarantees every citizen equal protection under the law, and this requirement is applicable to students in public school. The U.S. Supreme Court applied this provision to strike down state-sponsored racial segregation in schools.²³ More recently, this clause has been used to protect LGBTQ youth in schools who face unfair or discriminatory school actions.

Federal Agencies

While federal laws set the broad parameters that schools must follow, executive agencies such as the U.S. Department of Education implement and enforce those laws. They provide rules and guidance to help make clear to administrators, educators, parents, and students what is expected to comply with federal laws. They also provide a place that parents and students can turn to for relief when schools fail to fulfill their federal requirements or act in a discriminatory manner.

U.S. Department of Education

The U.S. Department of Education, primarily through its Office for Civil Rights (OCR), is responsible for enforcing the majority of civil rights laws applicable to public schools and colleges. To assist school districts to understand their responsibilities under federal law, OCR has issued guidance in a number of areas, as detailed below.

¹⁸ *Tinker v. Des Moines Independent School District*, 393 U.S. 503 (1969).

¹⁹ *School Dist. of Abington Township v. Schempp*, 374 U.S. 203 (1963).

²⁰ *Stone v. Graham*, 449 U.S. 39, 41 (1980).

²¹ *Edwards v. Aguillard*, 482 U.S. 578, 596-97 (1987).

²² *Board of Education, Island Trees Union Free School District No. 26 v. Pico*, 457 U.S. 853, 853 (1982).

²³ *Brown v. Board of Education of Topeka, Kansas*, 347 U.S. 483 (1954).



Bullying and Harassment

OCR has issued guidance clarifying both that bullying and harassment based on a protected characteristic that is not dealt with appropriately can rise to the level of prohibited discrimination, and that these protections apply to LGBTQ students despite the lack of specifically enumerated protections. Moreover, OCR has worked with the Department of Justice (DOJ) to enforce these protections in a number school districts (See Relevant Federal Cases and Settlement Agreements, ■ 9). Recent guidance includes:

- 2010 Dear Colleague Letter on Harassment and Bullying²⁴
 - Discussion of types of harassment and bullying
 - Application of federal law to these issues
 - Coverage of LGBTQ and religious minority students
 - School duties when responding to and reporting harassment
 - Appropriate steps for schools for ending harassment
- 2010 Anti-Bullying Policies: Examples of Provisions in State Laws²⁵
 - Summarizes key components of state anti-bullying laws and provides examples from various states
- 2014 Questions and Answers on Title IX and Sexual Violence²⁶
 - Clarifies that Title IX protections are fully applicable to harassment and discrimination based on failure to conform to sex-based stereotypes and gender identity
 - Discusses how Title IX applies to sexual violence in schools and outlines schools' obligations to address these issues
 - Proactive efforts schools can take to prevent sexual violence and remedies schools may use to end such conduct
- 2014 Dear Colleague Letter on Bullying of Students with Disabilities²⁷
 - Clarifies how federal laws protect students with disabilities from bullying and harassment
 - Discusses schools' obligations to address disability-based harassment

Transgender Students

In May 2016, the U.S. Departments of Education and Justice released a guidance letter after schools and districts requested clarification on their obligations under Title IX. This guidance clarified that schools should treat a student's gender identity as the student's sex for the purposes of Title IX. Therefore, Title IX protects transgender students from discrimination on the basis of gender identity.²⁸ When the DOE issued their guidance, they also released a guide to developing policies with sample ideas and wording.²⁹ In a survey of 17 school districts across the United States that have had transgender nondiscrimination policies in place, none have had experienced problems.³⁰

- 2016 Dear Colleague Letter on Transgender Students³¹
 - **Equal treatment.** Schools must treat a transgender student in the same way that they treat cis-gender students.
 - **Provide a safe and nondiscriminatory environment for all students, including transgender students.** Harassment that targets a student based on gender identity, transgender status, or gender transition is harassment based on sex is covered by Title IX.

²⁴ Russlyn, A. (2010). *Dear Colleague Letter: Harassment and Bullying*. U.S. Department of Education, Office for Civil Rights, available at: <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201010.html>.

²⁵ Duncan, A. (2010). *Anti-Bullying Policies: Examples of Provisions in State Laws*. U.S. Department of Education, available at: <http://www2.ed.gov/policy/gen/guid/secret/101215.html>.

²⁶ Lhamon, C.E. (2014). *Questions and Answers on Title IX and Sexual Violence*. U.S. Department of Education, Office for Civil Rights, available at: <http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf>.

²⁷ Lhamon, C.E. (2014). *Dear Colleague Letter: Responding to Bullying of Students with Disabilities*. U.S. Department of Education, Office for Civil Rights, available at: <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-bullying-201410.pdf>.

²⁸ Lhamon, C and Gupta, V. (2016). *Dear Colleague Letter: Transgender Students*. U.S. Department of Justice, Civil Rights Division and U.S. Department of Education, Office for Civil Rights, available at: <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201605-title-ix-transgender.pdf>.

²⁹ U.S. Department of Education, Office of Elementary and Secondary Education, Office of Safe and Healthy Students (2016) "Examples of Policies and Emerging Practices for Supporting Transgender Students." Available at: <http://www2.ed.gov/about/offices/list/oese/oshs/emergingpractices.pdf>

³⁰ Percelay, R. (2015) "Seventeen School Districts Covering 600,000 Students Experienced No Problems After Implementing Transgender Protections," *Media Matters*, available at: <http://mediamatters.org/research/2015/06/03/17-school-districts-debunk-right-wing-lies-abou/203867>.

³¹ Lhamon, C and Gupta, V. (2016). *Dear Colleague Letter: Transgender Students*. U.S. Department of Justice, Civil Rights Division and U.S. Department of Education, Office for Civil Rights, available at: <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201605-title-ix-transgender.pdf>.



- **School notification.** When a student or the student's parent or guardian notifies the school administration that the student will assert a gender identity that differs from previous representations or records, the school will begin treating the student consistent with the student's gender identity. There is no medical diagnosis or treatment requirement that students must meet as a prerequisite and students do not need to produce new identification documents.
- **Treat students with respect.** Use proper names and pronouns consistent with a student's gender identity.
- **Equal access.** Ensure students have equal access to sex-segregated facilities and activities that are consistent with their gender identity.
- **Ensure privacy:** Based on both Title IX and FERPA, schools need to take reasonable steps to protect students' privacy related to their transgender status, including their birth name or sex assigned at birth.

Equal Access

Gay-Straight Alliances (GSA) combat bullying and harassment of LGBT students and promote understanding and respect in the school community.³² By encouraging dialogue and providing supportive resources, these groups can help make schools safe and affirming environments for everyone. The Federal Equal Access Act prohibits such groups from being unlawfully excluded from school grounds, prevented from forming, or denied access to school resources. As the agency responsible for enforcing this law, the U.S. Department of Education has issued guidance clarifying schools' obligations. Recent guidance includes:

- 2011 Dear Colleague Letter on the Equal Access Act³³
 - Clarifies the duties and obligations of schools regarding non-curricular student groups
 - Makes clear that schools cannot suppress student groups because of an unpopular viewpoint
 - Clarifies the importance of supportive student groups for LGBTQ students

Student Privacy

The U.S. Department of Education has issued guidance clarifying the obligations of schools under the federal Family Education Rights and Privacy Act (FERPA). Generally, schools that receive federal funding may not improperly disclose personally identifiable information derived from education records. See Students' Rights to Privacy, p. 3, for more information. Recent guidance includes:

- FERPA for School Officials and FERPA General Guidance for Students³⁵
 - Clarifies when schools may or may not disclose personally identifiable information.
 - States that parents and eligible students have the right to inspect and review records.
 - States that parents and eligible students have the right to request that records be amended if they believe the records are inaccurate.

Single-Sex Classes and Activities

The U.S. Department of Education has issued guidance clarifying what is acceptable under Title IX in terms of single-sex classes and activities. Generally, schools must meet a number of requirements to ensure that these programs are non-discriminatory. The guidance also makes clear that transgender students should be treated in accordance with their gender identity with regard to single-sex classes and activities. Recent guidance includes:

- Questions and Answers on Title IX and Single-Sex Elementary and Secondary Classes and Extracurricular Activities³⁶
 - Clarifies whether and how single-sex classes and extracurricular activities are permissible under Title IX.
 - Details specific requirements regarding single-sex offerings to ensure they are non-discriminatory.
 - Specifically clarifies that transgender students may participate based on their gender identity.

³² Kosciw, J. G., Greytak, E. A., Palmer, N. A., & Boesen, M. J. (2014). *The 2013 National School Climate Survey: The experiences of lesbian, gay, bisexual and transgender youth in our nation's schools*. New York: GLSEN, available at: [file:///C:/Users/Agill/Downloads/2013%20National%20School%20Climate%20Survey%20Full%20Report%20\(4\).pdf](file:///C:/Users/Agill/Downloads/2013%20National%20School%20Climate%20Survey%20Full%20Report%20(4).pdf).

³³ Duncan, A. (2011). *Legal Guidelines on the Equal Access Act and the Recognition of Student-Led Noncurricular Groups*. U.S. Department of Education, Office for Civil Rights, available at: <http://www2.ed.gov/policy/elsec/guid/secletter/110607.html>.

³⁴ FERPA for School Officials, U.S. Department of Education (Last Viewed 06/15/2015), available at: <http://familypolicy.ed.gov/ferpa-school-officials?src=ferpa-s>.

³⁵ FERPA General Guidance for Students, U.S. Department of Education (Last Modified 02/05/2015), available at: <http://www2.ed.gov/policy/gen/guid/fpco/ferpa/students.html>. ³⁵

³⁶ Lhamon, C.E. (2014). *Questions and Answers on Title IX and Single-Sex Elementary and Secondary Classes and Extracurricular Activities*. U.S. Department of Education, Office for Civil Rights, available at: <http://www2.ed.gov/about/offices/list/ocr/docs/faqs-title-ix-single-sex-201412.pdf>



Complaints & Enforcement

Under federal law, schools cannot discriminate against students on the basis of gender. This has been interpreted to prohibit discrimination, including sexual harassment, against LGBTQ students based on sex-stereotypes (gender expression), sexual orientation, and gender identity. If a student is directly discriminated against by school officials or if a school fails to protect a student from bullying, the student or the student's parents can file a complaint directly with the US Department of Education, Office for Civil Rights.

Schools frequently discriminate against LGBTQ students in many ways, including:

- failing to allow a student to dress in a gender non-conforming way in a yearbook photo, at a prom, or at school;
- failing to allow a student to use bathrooms and locker rooms consistent with their gender identity;
- penalizing students for identifying as LGBTQ;
- refusing to allow a student to take a same-sex date to a dance;
- unfair discipline against LGBTQ students;
- harassment by educators; or
- denying privileges based on gender.

It is also a form of discrimination if a school fails to provide effective remedial action when a student is bullied on the basis of gender, gender identity, or sex-based stereotypes.

Anyone who believes that an education institution (which receives federal money) has discriminated against someone based on race, color, national origin, sex (including sexual orientation, gender identity and failure to conform to sex-based stereotypes), disability, or age may file a complaint with the Office for Civil Rights. The person or organization filing the complaint need not be a victim of the alleged discrimination, but may complain on behalf of another person or group. For more information on how to file a complaint, go to: <http://www2.ed.gov/about/offices/list/ocr/complaintintro.html>.

A person or organization does not need a lawyer to file a complaint with the Office for Civil Rights. However, complaints must be filed within **180 days (6 months)** of when the bullying or discrimination occurred. **It is critical to mention in the complaint the basis on which the school discriminated (gender, race, etc.).** The more detail that can be provided with regard to the discrimination (dates, a description of the school's actions, names of individuals involved, clear descriptions of the discriminatory behavior, etc.), the more likely that the Office for Civil Rights will be able to take action.

Claims that are filed are confidential, meaning that they will not be shared without the permission of the person who filed. Also, school staff may not retaliate against anyone who has filed a complaint or who has assisted in the investigation of any complaint.

U.S. Department of Justice

The U.S. Department of Justice (DOJ) is the primary federal agency charged with criminal investigation and enforcement, and the agency also enforces some civil rights laws relevant to schools. Working with the U.S. Department of Education Office for Civil Rights (OCR), the U.S. Department of Justice Educational Opportunities Section (EOS) investigates complaints of discrimination or harassment in public schools in violation of federal law.

Unlike OCR, EOS is not required to investigate every complaint that is filed, and the agency has a separate complaint process. Working together, these departments have been able to achieve several high-profile settlements and consent decrees with school districts that harassed or discriminated against LGBTQ students (see Relevant Federal Cases & Settlement Agreements, p. 9).



U.S. Equal Employment and Opportunities Commission (EEOC)

The U.S. Equal Employment and Opportunities Commission (EEOC) is the federal agency that enforces federal laws against workplace discrimination, including in schools. Based on existing law, the EEOC enforces complaints based on age, color, disability, national origin, pregnancy, race, and sex.

Beginning in 2012, a landmark decision by the EEOC in *Macy v. Holder*³⁷ made clear that the agency considers discrimination on the basis of transgender status or gender identity to be a form of prohibited discrimination on the basis of sex under Title VII. This decision followed other similar rulings from various courts, and it has led to a broader interpretation of Title VII (employment) and Title XI (education) law to allow such laws to provide some protections to transgender people.

In February of 2015, EEOC released a field memo saying that workers are protected under Title VII from employment discrimination based on sexual orientation, as well as gender identity. The memo states: "Individuals who believe they have been discriminated against because of their sexual orientation should be counseled that they have a right to file a charge with the EEOC, and their charges should be accepted under Title VII and investigated as claims of sex discrimination in light of Commission precedent ..." Additionally, the memo reaffirmed the position that Title VII protects transgender workers from discrimination.³⁸

Then, in July of 2015, the EEOC determined in *Baldwin v. Foxx*³⁹ that discrimination on the basis of sexual orientation is a form of sex discrimination prohibited by Title VII. The decision was based on recent trends in federal court decisions. Like *Macy v. Holder*, this decision is expected to lead to broader interpretations of both Title VII and Title IX.

Complaints & Enforcement

The EEOC can accept and investigate employment discrimination complaints pertaining to private employers, and they can hear complaints from other federal agencies once those complaints have been investigated by the relevant agency. In many states, the EEOC works with state and local Fair Employment Practices Agencies (FEPAs), which enforce state and local non-discrimination laws. Note that state and municipal law can vary widely on available non-discrimination protections related to sexual orientation and gender identity.

For more information about how to file a complaint with the EEOC, see:

<http://www.eeoc.com/guidance/how-to-guide/how-to-file-employment-discrimination-charges/>

Relevant Federal Cases and Settlement Agreements

In one of the landmark cases, ***Nabozny v. Podlesny***, the harassment began early in the seventh grade when the plaintiff realized that he was gay. He was regularly referred to as "faggot" and the verbal abuse eventually escalated into physical abuse over a number of years. A federal appeals court held that schools can be held liable for deliberately ignoring anti-gay harassment. The case settled for close to \$1 million.⁴⁰

In the spring of 2012, the **Anoka-Hennepin School District in Minnesota** settled two lawsuits. Between 2009 and 2011, 9 students in the Anoka-Hennepin area died due to suicide. The middle school students had suffered harassment that had been made worse by a "neutrality" policy that banned school staff from mentioning LGBT topics even when dealing with anti-LGBT bullying. The plaintiffs received \$270,000 and the district will also spend \$500,000 on anti-bullying measures.⁴¹

³⁷ *Macy v. Holder*, Appeal No. 0120120821 (U.S. Equal Employment Opportunity Commission, Apr. 20, 2012).

³⁸ Inzeo, N.M. (2015). Update on Intake and Charge Processing of Title VII Claims of Sex Discrimination Related to LGBT Status. U.S. Equal Employment Opportunities Commission, available at: <http://www.hrdefenseblog.com/files/2015/02/eeoc-lgbt-field-guidance.pdf>

³⁹ *Baldwin v. Foxx*, Appeal No. 0120133080, 2015 WL 4397641 (July 16, 2015).

⁴⁰ *Nabozny v. Podlesny*, 92 F.3d 446 (7th Cir. 1996).

⁴¹ *Doe v. Anoka-Hennepin School District*, NO. 11-cv-01999-JNE-SER, Consent Decree (D. Minn. 2012). Available at: <http://www.justice.gov/sites/default/files/usao-mn/legacy/2012/03/06/Anoka-Hennepin%20FINAL%20Consent%20Decree.pdf>



Relevant Federal Cases and Settlement Agreements (Cont.)

In 2013, the **Arcadia Unified School District in southern California** reached an agreement with the Departments of Justice and Education regarding a sex discrimination case brought by the family of a transgender student who had “consistently and uniformly presented as a boy at school and in all other aspects of his life for several years.” The agreement includes: hiring a consultant with expertise in child and adolescent gender identity; reviewing and revising policies; training for all District-level and school-based administrators; professional development for faculty and staff; and integration of gender discrimination and harassment into bullying prevention programs. It also includes: access to restrooms consistent with gender identity; equal treatment in education programs; confidentiality and privacy in school records; and if requested by the student or parents a support team at the school to ensure protection from gender-based discrimination in school programs or activities.⁴²

In 2014, the **Tehachapi Unified School District in California** settled with the a student’s parents for \$750,000.⁴³ The 13-year old student who died by suicide had suffered severe harassment based on his sexual orientation and gender expression, and the school failed to take appropriate measures to prevent such harassment. In 2011, the District had settled with the Civil Rights Division of the Department Justice and the Office of Civil Rights of the Department of Education. They agreed to revise their policies and implement a comprehensive plan to address bullying and harassment, under the supervision of these agencies.⁴⁴

In 2014, the **Granite School District in Utah** settled for an undisclosed amount with the family of a 14-year-old gay teen who shot himself in front of other students near the junior high school. In the settlement, the district agreed to implement new practices and policies including an expanded definition of gender harassment and they agreed to work with the Equity Assistance Center, that is funded by the U.S. Department of Education to help schools navigate race, gender and national-origin issues.⁴⁵

In 2015, the **Moss Point School District in Mississippi** settled for an undisclosed amount with a student who had been 14 at the time who had been continually harassed by fellow students, teachers, and administrators at her high school because of her sexual orientation. The school district was also required to adopt and implement new anti-bullying and harassment policies and procedures, including equal educational opportunity policies based on sexual and gender identity.⁴⁶

In 2015, the **Carl Junction R-1 School District in Missouri** settled for \$300,000 with the parents of a 14-year-old boy who died by suicide. Harassment at the school started in seventh grade when the boy came out as bisexual. Students taunted him with slurs about his sexual orientation, suggested that he kill himself, physically threatened him, and stole and destroyed his personal belongings. The cause of action included a Title IX claim for deliberate indifference to gender-based harassment.⁴⁷

⁴² Resolution Agreement Between the Arcadia Unified School District, the U.S. Dept. of Education, Office for Civil Rights, and the U.S. Dept. of Justice, Civil Rights Division. (2013). Available at: <http://www.justice.gov/sites/default/files/crt/legacy/2013/07/26/arcadiaagree.pdf>.

⁴³ Walsh v. Tehachapi Unified School District, No. 11-cv-1489 (E.D. Cal. 2014) <http://www.publicjustice.net/sites/default/files/2015.07.17%20Summer%20Edition-Bullying%20Verdicts%20and%20Settlements-Final.pdf>

⁴⁴ RESOLUTION AGREEMENT Between the Tehachapi Unified School District, the U.S. Department of Education, Office for Civil Rights, and the U.S. Department of Justice, Civil Rights Division OCR Case No. 09-11-1031 DOJ Case Number DJ 169-11E-38. Available at: <https://www.justice.gov/sites/default/files/crt/legacy/2013/01/17/tehachapiagreement.pdf>

⁴⁵ McCombs, B. (2014) “Settlement in case of Utah boy who killed himself,” Standard Examiner. Available at: <http://www.standard.net/Courts/2014/09/29/Settlement-in-case-of-Utah-boy-who-killed-himself-1>

⁴⁶ “SPLC reaches settlement with Mississippi school district to stop anti-LGBT bullying” (2015) Southern Poverty Law Center. Available at: <https://www.splcenter.org/news/2015/02/25/splc-reaches-settlement-mississippi-school-district-stop-anti-lgbt-bullying>

⁴⁷ “Jury Verdicts and Settlements in Bullying Cases” (2015) Public Justice. Available at: <http://www.publicjustice.net/sites/default/files/2015.07.17%20Summer%20Edition-Bullying%20Verdicts%20and%20Settlements-Final.pdf>



In 2016 in **G.G. v. Gloucester County School District in Virginia** the U.S. Court of Appeals for the Fourth Circuit held that school districts denying transgender students access to bathrooms consistent with their gender identity are in direct violation of Title IX. This decision affirms guidance issued by the Department of Education interpreting Title IX of the Education Act of 1972 as protecting transgender students from discrimination, including allowing them to use restrooms consistent with their gender identity. The ruling came in the case of Gavin Grimm, a 16-year-old high school student and transgender teen, whose lawsuit against the School District alleges the district violated Title IX by denying him use of the boy's restroom.⁴⁸

State Protections

State Anti-Bullying and Harassment Laws

In every state, lawmakers have taken legislative action to prevent bullying and protect students. Through laws (in their state education codes and elsewhere) and model policies (that provide guidance to districts and schools), each state addresses bullying differently.⁴⁹ Anti-bullying laws generally function by requiring each public school district in a state to have policies, and sometimes programs and training, to prevent and address school bullying.

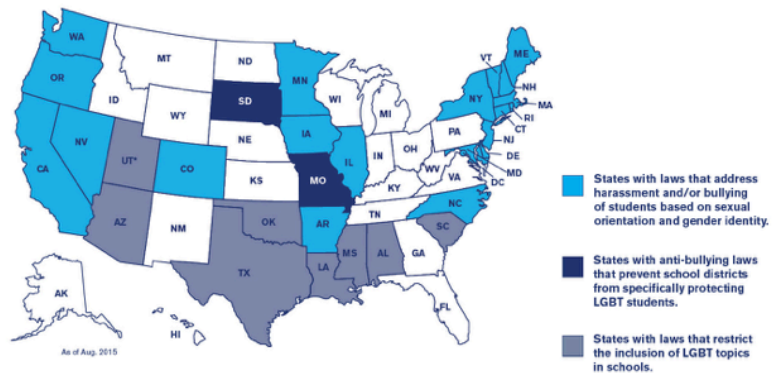
While the majority of states have some form of anti-bullying and harassment legislation, as of 2015, only 20 states plus the District of Columbia have enumerated anti-bullying or non-discrimination laws that specifically include sexual orientation and gender identity.⁵⁰ Such specific protections are essential to ensure that LGBT youth and other vulnerable students are protected (see Enumeration in Anti-Bullying Laws and Policies, p. 11).

Effective State Anti-Bullying and Harassment Laws

Several federal agencies maintain the StopBullying.gov website, which provides details about anti-bullying laws and model policies in each state. The U.S. Department of Education issued a synopsis of key components seen in such laws, with examples from various states.⁵¹ Some of these recommendations include:

- Inclusion of enumeration of actual or perceived characteristics of students who are frequently targets of bullying while at the same time being clear that something can be called bullying that is not based on any particular characteristic.
- A graduated range of consequences and sanctions for bullying, including alternative discipline.
- Includes a provision for school districts to provide training for all school staff, including, but not limited to, teachers, aides, support staff, and school bus drivers, on preventing, identifying, and responding to bullying.
- Age-appropriate school- and community-wide bullying prevention programs.

STATEWIDE SCHOOL ANTI-BULLYING LAWS & POLICIES



⁴⁸ *G.G. v. Gloucester County School Board*, Civil No. 4:15cv54, Case 4:15-cv-00054-rgd-dem document 69. (U.S. District Court for the Eastern District of Virginia Newport News Div. June 23, 2016) Available at: https://www.aclu.org/sites/default/files/field_document/069_order_granting_plaintiff_g.g.s_motion_for_preliminary_injunction_2016.06.23.pdf

⁴⁹ *State Anti-Bullying Laws and Policies*. stopbullying.gov. Available at: www.stopbullying.gov/laws/index.html.

⁵⁰ Gill, A.M. (2015). *2014 State Equality Index*. Washington, DC: Human Rights Campaign Foundation, available at: <http://www.hrc.org/campaigns/state-equality-index>.

⁵¹ Duncan, A. (2010). *Anti-Bullying Policies: Examples of Provisions in State Laws*. U.S. Department of Education, available at: <http://www.stopbullying.gov/laws/key-components/index.html>.



Enumeration in Anti-Bullying Laws and Policies

Enumerated laws and policy specifically list actual or perceived characteristics of students who are frequently targets of bullying.

Students in states with comprehensive enumerated safe school laws report:

- Hearing fewer anti-gay remarks in school;
- Experiencing lower levels of harassment based on their sexual orientation or gender expression;
- A higher frequency of staff intervention than students in states with no law or in states with a non-enumerated anti-bullying law.⁵²

As of 2015, 20 states plus the District of Columbia have state anti-bullying laws that enumerate various categories, including sexual orientation and gender identity. In several other states without an enumerated anti-bullying law, either the state education agency or the state association of school boards provides model anti-bullying policies that are enumerated. In most states, school districts are able to build enumeration into their anti-bullying policies even if the state law is not explicit.

Cyberbullying

Cyberbullying is any bullying or harassing behavior that takes place through electronic communication, whether on a student's cell phone at school, through a school computer system, or through the internet. The state of the law on school officials' ability to regulate cyberbullying is complex, but in general in order to be regulated by schools officials, cyberbullying must have some nexus to the school environment, it must be directed at a student, and it must substantially interfere with the student's ability to participate school services or activities. While most states have anti-bullying laws that address cyberbullying, some states may take a more limited view of activity that schools can regulate.

State Model Policies for School Districts

In addition to anti-bullying laws, in many states the state education agency (SEA) has developed a model anti-bullying policy which complies with the state's anti-bullying and other state laws. Generally, school districts in these states are free to adopt this model policy or develop and use another policy, as long as they comply with state anti-bullying statutes. In some states, it is mandatory for school districts to provide students with at least the base level of anti-bullying protection found in the state's model policy.

Sample State Anti-Bullying and Harassment Legislation

In addition to the key components of effective anti-bullying laws provided by the U.S. Department of Education, there are several examples of strong state anti-bullying legislation available:

- GLSEN Model State Anti-Bullying & Harassment Legislation⁵³
- ADL Cyberbullying Prevention Model Statute⁵⁴

⁵² *G.G. v. Gloucester County School Board*, Civil No. 4:15cv54, Case 4:15-cv-00054-rgd-dem document 69. (U.S. District Court for the Eastern District of Virginia Newport News Div. June 23, 2016) Available at: https://www.aclu.org/sites/default/files/field_document/069_order_granting_plaintiff_g.g.s_motion_for_preliminary_injunction_2016.06.23.pdf

⁵³ *State Anti-Bullying Laws and Policies*. stopbullying.gov. Available at: www.stopbullying.gov/laws/index.html.

⁵⁴ Gill, A.M. (2015). *2014 State Equality Index*. Washington, DC: Human Rights Campaign Foundation, available at: <http://www.hrc.org/campaigns/state-equality-index>.



School Laws that are Detrimental to Students

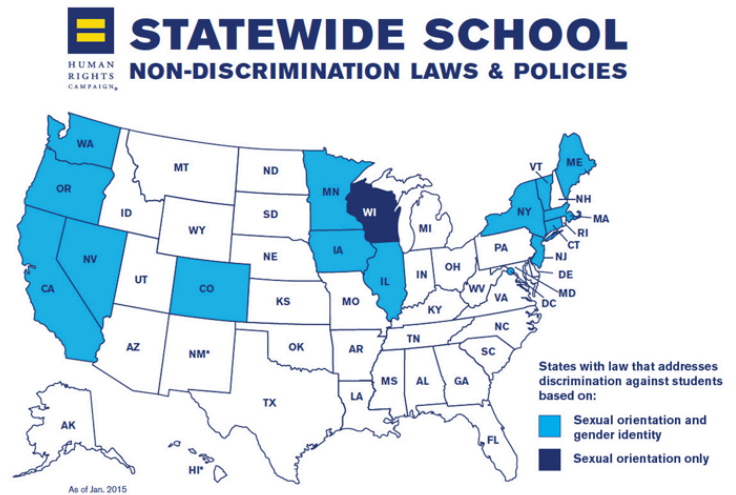
Unfortunately, several states have passed anti-bullying legislation that either prevents school districts from listing characteristics that are frequently the target of bullying or includes harsh discipline or criminalizes students who engage in bullying behavior. As of 2015, South Dakota⁵⁵ and Missouri⁵⁶ are the only two states that have passed legislation that prevents enumeration, a key component that helps make these policies effective for LGBTQ and other vulnerable students (see Enumeration in Anti-Bullying Laws and Policies, p. 12).

Some state anti-bullying laws have either mandatory, one-size-fits-all discipline or zero-tolerance policies, or laws which specifically criminalize either bullying or cyberbullying. This frequently leads to disparate punishment for vulnerable youth, such as students of color, students with disabilities, and LGBTQ youth – the very youth these anti-bullying laws are meant to protect. Very often youth who engage in bullying behavior are themselves subject to bullying, putting such students at even greater risk of negative outcomes. Rather than focusing on discipline, the most effective anti-bullying laws and policies are educational and preventative.⁵⁸

Non-Discrimination State Laws for Students and Educators

Education Non-Discrimination Laws

As of 2015, 14 states plus the District of Columbia have state laws that prohibit discrimination in education on the basis of sexual orientation and gender identity. Another state (Wisconsin) prohibits such discrimination based on sexual orientation only. As noted above (see p. 4), federal agencies have increasingly made clear that non-discrimination protections in education based on sex apply to gender identity and sex-based stereotypes.



State Guidance Regarding Transgender and Gender Expansive Students

Several states, prior to the U.S. Department of Education Guidance Letter, after passing statewide laws prohibiting discrimination on the basis of gender identity in schools, developed guidelines to assist schools in implementing the laws, clarifying what non-discrimination means in the context of transgender and gender nonconforming students. Examples include:

- “Guidance to School Districts for Creating a Safe and Supportive School Environment For Transgender and Gender Nonconforming Students” that was released in 2015 by the New York State Education Department⁵⁹
- “Transgender and Gender Nonconforming Policy Guidance” released by the District of Columbia Public Schools in 2015.⁶⁰

⁵⁵ S.D.C.L. § 13-32-14.

⁵⁶ R.S. Mo. § 160.0775.3.

⁵⁷ See Burdge, H., Licon, A.C., Hyemingway, Z.T. (2014). *LGBTQ Youth of Color: Discipline Disparities, School Push-Out, and the School-to-Prison Pipeline*. San Francisco, CA: Gay-Straight Alliance Network and Tucson, AZ: Crossroads Collaborative at the University of Arizona. available at: http://www.gsannetwork.org/files/aboutus/LGBTQ_brief_FINAL-web.pdf.

⁵⁸ For more information, see: *Two Wrongs Don't Make a Right: Why Zero Tolerance is Not the Solution to Bullying*. (2012). San Francisco, CA: Gay-Straight Alliance Network and Washington, DC: Advancement Project and Alliance for Educational Justice, available at: http://b3cdn.net/advancement/73b640051a1066d43d_yzm6rkffb.pdf.

⁵⁹ New York State Education Department, “Guidance to School Districts for Creating a Safe and Supportive School Environment For Transgender and Gender Nonconforming Students” (July 2015) available at: http://www.p12.nysed.gov/dignityact/documents/Transg_GNCGuidanceFINAL.pdf.

⁶⁰ District of Columbia Public Schools, “Transgender and Gender Nonconforming Policy Guidance,” (June 2015) available at: <http://dcps.dc.gov/sites/default/files/dc/sites/dcps/publication/attachments/DCPS%20Transgender%20Gender%20Non%20Conforming%20Policy%20Guidance.pdf>



Notable State Cases and Settlement Agreements in Elementary Schools

In 2013, the **Colorado Division of Civil Rights** ruled in favor of a six-year-old transgender girl who the elementary school had barred from using the girls' bathroom. Recognizing that this created a hostile environment for the student, the agency ruled that this treatment is a form of discrimination under Colorado's education non-discrimination laws.⁶¹

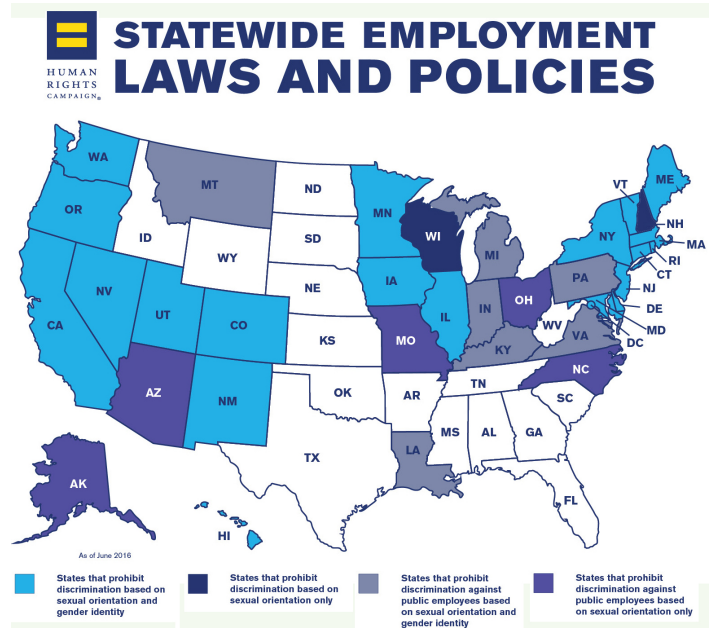
In 2014, the **Maine Supreme Judicial Court** upheld an earlier decision before the Maine Human Rights Commission to require a Maine school district to allow a fifth grade transgender student to use sex-segregated facilities in accordance with her gender identity. The Human Rights Commission and Court agreed that state education non-discrimination laws based on gender identity and expression require schools to treat transgender students identically to other students of the same gender at school and allow them to use appropriate bathrooms.⁶²

In addition, 14 states plus the District of Columbia have either legislation, regulations from the state education agency, or authoritative guidance from the state organization that regulates intermural secondary school sports that allows transgender students reasonable access to participate in school sports. For additional information regarding inclusion of transgender students in state intermural sports, see "On the Team: Equal Opportunity for Transgender Student Athletes."⁶³

Employment Non-Discrimination Laws

20 states plus the District of Columbia have statewide laws that prohibit discrimination in employment on the basis of sexual orientation and gender identity. Two additional states (Wisconsin and New Hampshire) prohibit such discrimination on the basis of sexual orientation only. These laws generally apply to school staff, although there are some exceptions in religiously-affiliated schools.

In addition, 7 states prohibit discrimination against some public employees (which may include public school staff) based on sexual orientation and gender identity (Indiana, Kentucky, Louisiana, Michigan, Montana, Pennsylvania, and Virginia) and 5 states provide protection based on sexual orientation only (Alaska, Arizona, Missouri, North Carolina, and Ohio).⁶⁴ Finally, as noted above (see p. 5), federal agencies have increasingly made clear that non-discrimination protections in employment based on sex apply to gender identity and sex-based stereotypes.



⁶¹ Steven Chavez, Charge No. P20130034X Determination, Colorado Dept. of Regulatory Agencies, Division of Civil Rights (2013). Available at: http://www.transgenderlegal.org/media/uploads/doc_529.pdf.

⁶² John Doe et al. v. Regional School Unit 26, 2013 ME 11. Available At: <https://www.glad.org/uploads/docs/cases/doe-v-clenchy/doe-v-clenchy-decision-1-30-14.pdf>.

⁶³ Griffin, P. and Carroll, H.J. (2010). On the Team: Equal Opportunity for Transgender Student Athletes. San Francisco, CA: National Center for Lesbian Rights and New York, NY: Women's Sports Foundation and It Takes a Team! available at: http://sports.glsen.org/wp-content/uploads/2011/03/On_the_Team_Transgender_Student_Athletes_10-4-10.pdf.

⁶⁴ Human Rights Campaign (2016) "Maps of State Laws and Policies." Available at: http://www.hrc.org/state_maps



State Laws That Restrict Inclusion of LGBTQ Topics in Schools

Laws that restrict the inclusion of LGBTQ topics in schools, also known as “no promo homo” or “don’t say gay” laws, are state laws that expressly forbid teachers from discussing LGBTQ issues or require that they be discussed in negative, often inaccurate, ways. Generally, part of the state’s sex education law, these laws are frequently interpreted more broadly by school districts to prevent any discussion of LGBTQ issues or even LGBTQ-related events. Unfortunately, these laws serve only to further stigmatize LGBTQ students by providing students false, misleading, or incomplete information about LGBTQ people. In 2015, there are 8 states that have these types of laws (Alabama, Arizona, Louisiana, Mississippi, Oklahoma, South Carolina, Texas, and Utah), and the Alabama law provides an example:

- In Alabama, in terms of sex education, “Classes must emphasize, in a factual manner and from a public health perspective, that homosexuality is not a lifestyle acceptable to the general public and that homosexual conduct is a criminal offense under the laws of the state.”⁶⁵

State Laws Regarding Parental Rights

A number of states have laws regarding parental notification, the requirement that parents sign a form to allow their child to learn a particular lesson (“opt-in”) or the ability of parents to request that their child not be included in a particular lesson (“opt-out”). Generally, these laws specifically refer to sex education, human sexuality, or sexually transmitted infection (STI) or HIV/AIDS prevention.

Courts have consistently ruled that school districts have the responsibility for the content of a curriculum as long as it is based on sound education rationale.⁶⁶ Particularly in elementary school, discussion of LGBTQ topics focuses on teaching tolerance and respect rather than teaching sex education. Discussions with younger students that include LGBTQ topics are about families, bullying prevention, and respect for everyone.

It is important to note that some of these state laws may undermine Gay-Straight Alliances (GSAs) or other supportive student groups by requiring parental permission to attend these activities. To comply with the Federal Equal Access Act, schools must treat all non-curricular student groups equally, so they may not impose additional requirements on GSAs or other such groups.

State-Level Agencies

Like federal agencies, state-level agencies frequently issue regulations or guidance to help schools, educators, parents, and students understand how state law functions. Many state education agencies will issue or identify additional resources for schools and educators in various areas like bullying prevention.

Filing a Complaint

A number of states have state administrative agencies to process education and employment discrimination claims. These procedures will vary widely by state, but most will require that complaints are filed within 180 days from when the incident of discrimination or harassment occurred. For more information, consult the websites of the relevant state agencies, such as the state education agency for education discrimination or the civil rights commission for employment discrimination. In many cases, it is possible to file a complaint both with the state agency and with the federal agency (i.e., the Department of Education Office for Civil Rights, Department of Justice, or the Equal Employment Opportunities Commission).

⁶⁵ Ala. Code § 16-40A-2(c)(8).

⁶⁶ See, e.g., *Evans-Marshall v. Board of Education of the Tipp City Exempted Village School District*, 624 F.3d 332 (6th Cir. 2010).



School District Protections

Anti-Bullying Policies

Most state anti-bullying laws require school districts to adopt anti-bullying policies with specific key components, such as a baseline definition of bullying and harassment, coverage of cyberbullying, training for educators, a particular investigation process, or reporting to the state education agency. In most states, school districts have the flexibility to add additional components that are not included in the state anti-bullying law or the model anti-bullying policy. Because of its importance to protect marginalized students, we encourage all school districts to adopt policies with specific enumeration of characteristics frequently the target of bullying and harassment, including sexual orientation and gender identity (see Enumeration in Anti-Bullying Laws and Policies, p. 11).

Many states have model anti-bullying policies, which a school district can adapt to meet their local needs. Other recommended model policies include:

- GLSEN Model District Anti-Bullying and Harassment Policy⁶⁷

Non-Discrimination Policies

Most school districts have adopted policies to protect their staff and students from discrimination based on various categories protected by state and federal law. Federal law requires school districts to prevent discrimination in race, color, religion, sex, national origin, and disability. As noted above (see p. 6), federal agencies have increasingly made clear that non-discrimination protections in education based on sex apply to gender identity and sex-based stereotypes. In addition, 14 states plus the District of Columbia have state laws that prohibit discrimination in education on the basis of sexual orientation and gender identity. Another state (Wisconsin) prohibits such discrimination based on sexual orientation only. Finally, hundreds of municipalities across the country prohibit such discrimination in various areas, including education.

While school districts should have non-discrimination policies in place that comply with federal and state laws and local ordinances, in most states districts have the option to protect additional categories, like sexual orientation and gender identity, which may not be expressly protected by state law.

Model Transgender and Gender Expansive Student Policies

In addition to basic non-discrimination policies applicable to gender identity, some school districts have adopted policies to clarify how non-discrimination protections apply to transgender and gender expansive students.⁶⁸ In 2016, the U.S. Departments of Education and Justice along with the release of the Dear Colleague Letter developed a guide to help districts develop new policies.

Transgender and gender expansive students are frequently subject to disparate discipline, harassment, discrimination, and school pushout. Many schools and educators do not fully understand how to respectfully treat these vulnerable students with regard to areas like records, name, pronouns; student privacy; sex-segregated facilities; dress codes; or athletics – a transgender and gender expansive student policy can help.

⁶⁷ *Model District Anti-Bullying & Harassment Policy*. (2010). New York, NY: GLSEN, available at: <http://www.glsen.org/sites/default/files/GLSEN%20model%20district%20policy.pdf>.

⁶⁸ See, e.g., Holmquist, David (2014). *Transgender Students – Ensuring Equity and Nondiscrimination*. Los Angeles Unified School District Policy Bulletin BUL-6224.0. Available at: http://notebook.lausd.net/pls/ptl/docs/PAGE/CA_LAUSD/FLDR_ORGANIZATIONS/FLDR_INSTRUCTIONAL_SVCS/INSTRUCTIONALSUPPORTSERVICES/EDUCATIONAL_EQUITY_COMPLIANCE/EEC_PROJECT_10/BUL-6224.0%20-%20TRANSGENDER%20POLICY%20BULLETIN%2002-03-14.PDF.



There are several model policies for school districts that wish to adopt a similar policy to ensure that transgender and gender expansive youth are protected:

- U.S. Departments of Education and Justice, “Examples of Policies and Emerging Practices for Supporting Transgender Students”⁶⁹
- GLSEN & NCTE Model District Policy on Transgender and Gender Nonconforming Students⁷⁰
- U.S. Departments of Education and Justice, “Examples of Policies and Emerging Practices for Supporting Transgender Students”⁷¹

Student Suicide Prevention Policies

Although suicide is the third leading cause of death among youth ages 10-19 in the U.S., most school districts do not have any policy in place regarding preventing or responding to student suicide. Over the last several years, an increasing number of states have passed legislation to require educators to receive regular suicide prevention training, so that they can recognize warning signs among students and react appropriately. A few states have passed laws to require school districts throughout the state to adopt suicide prevention policies. Any school district has the ability to pass such a policy, even if not required by the state, and by having clear policies and procedures in place concerning suicide prevention, intervention, and postvention, schools can act to reduce the risk of suicide and respond appropriately when a suicide occurs.

The Trevor Project, American Foundation for Suicide Prevention, American School Counselor Association, and National Association of School Psychologists published a model suicide prevention policy for school districts.⁷²

Zero Tolerance Policies and Alternative Disciplinary Methods

With an increased focus on reducing student bullying and increasing school safety, many schools adopted zero tolerance policies. In some cases, these policies were encouraged or required by state laws. However a punitive approach has been frequently questioned, both in terms of effectiveness and due to the disparate enforcement and impact on marginalized students. For example, in a recent analysis of Seattle Public School data, students of color, as young as kindergarten, were suspended or expelled at a much higher rate than white students.⁷³ In a study using data from the National Longitudinal Study of Adolescent Health, LGB youth, particularly girls, are more likely to experience harsh disciplinary treatment by school administrators than their heterosexual peers for similar offenses.⁷⁴

Suspensions are associated with numerous negative student outcomes including lower academic engagement and performance with higher rates of dropout and failures to graduate on time.⁷⁵ Questions also have been raised about the appropriateness of these policies for preventing bullying. The concern is that threats of severe punishment—such as suspension or expulsion—may actually deter children and adults from reporting bullying that they observe.⁷⁶

⁶⁹ U.S. Department of Education, Office of Elementary and Secondary Education, Office of Safe and Healthy Students (2016) “Examples of Policies and Emerging Practices for Supporting Transgender Students.” Available at: <http://www2.ed.gov/about/offices/list/oese/oshs/emergingpractices.pdf>

⁷⁰ Model District Policy on Transgender and Gender Nonconforming Students. New York, NY: GLSEN and Washington, DC: National Center for Transgender Equality (2014). Available at: http://www.glsen.org/sites/default/files/Trans_ModelPolicy_2014.pdf.

⁷¹ Griffin, P. and Carrol, H. (2011) NCAA Inclusion of Transgender Student Athletes. Available at: https://www.ncaa.org/sites/default/files/Transgender_Handbook_2011_Final.pdf

⁷² Model School District Policy on Suicide Prevention. (2014). West Hollywood, CA: The Trevor Project, Washington, DC: National Association of School Psychologists and American School Counselor Association, and New York, NY: American Foundation for Suicide Prevention, available at: http://b3cdn.net/trevor/10a65fa42e6ebddc24_qem6bvseu.pdf.

⁷³ Rowe, Claudia. “Race dramatically skews discipline, even in elementary school.” *Seattle Times*. [Seattle] 23 June 2015, available at: <http://www.seattletimes.com/education-lab/race-dramatically-skews-discipline-even-in-elementary-school/>.

⁷⁴ Himmelstein, K.E.W., and H. Brückner. (2011). “Criminal Justice and School Sanctions Against Nonheterosexual Youth: A National Longitudinal Study.” *Pediatrics* 127(1):49–57, available at: <http://pediatrics.aappublications.org/content/early/2010/12/06/peds.2009-2306.full.pdf+html>.

⁷⁵ U.S. Department of Education, “Laws and Guidance: School Climate and Discipline” (2015) available at: <http://www2.ed.gov/policy/gen/guid/school-discipline/index.html>.

⁷⁶ Russell S. (2010). Zero Tolerance and Alternative Discipline Strategies. National Association of School Psychologists, available at: http://www.nasponline.org/resources/handouts/Zero_Tolerance_35-1_S4-35.pdf.



Alternatives to Zero Tolerance Policies

Due to increased concern over the impact of suspensions and expulsions on academic achievement and life outcomes, many schools and districts are examining alternative strategies that can improve the school environment and improve students' educational opportunities. These programs emphasize social, behavioral, cognitive skill-building, character education, or targeted behavioral supports.

The U.S. Department of Education in its guidance on School Climate and Discipline⁷⁷ noted that interventions – both school-wide and individual – that use proactive, preventative approaches, address the underlying cause or purpose of the behavior, and reinforce positive behaviors, have been associated with reductions in suspensions and school dropouts and increases in academic engagement and achievement.

Several states have begun to incorporate alternative discipline approaches into their anti-bullying laws. A strong example is Maine, which updated its anti-bullying law in 2011.⁷⁸ In 2015, Illinois passed a major reform of the state's school discipline policies that eliminates automatic “zero tolerance” suspensions and expulsions, and requires schools to exhaust all other means of intervention before expelling or suspending students for more than three days.⁷⁹

October 2016

⁷⁷ U.S. Department of Education, “Laws and Guidance: School Climate and Discipline” (2015) available at: <http://www2.ed.gov/policy/gen/guid/school-discipline/index.html>.

⁷⁸ M.R.S.A. Title 20-A § 6554(2)(A).

⁷⁹ Illinois Public Act 099-0456 (2015). Available at: <http://www.ilga.gov/legislation/publicacts/fulltext.asp?Name=099-0456>.