

KNOW YOUR RIGHTS



KNOW YOUR RIGHTS

A Guide for Transgender and Gender Nonconforming Students



GLSEN[®]

KNOW YOUR RIGHTS: A GUIDE FOR TRANSGENDER AND GENDER NONCONFORMING STUDENTS

You have the right to be safe and to be yourself at school. That is why the American Civil Liberties Union (ACLU) and GLSEN have put together this guide to inform you of your rights.



THE BASICS

Your Right to Be Safe in School

Public schools are legally required to protect all students from harassment. Under the U.S. Constitution, schools must address any harassment against you the same way they would for any other student. Under a federal law called Title IX that bans sex discrimination in schools that receive federal funding, public schools can't ignore discrimination or harassment based on gender identity and expression. Many states also ban schools from discriminating based on gender identity and expression. However, for Title IX to apply, the harassment has to be severe, and the school has to have been told about it and then have not done enough to address it. For this reason, it is very important to report harassment every time it happens if you feel safe doing so. If you're being harassed or bullied or see it happening to someone else, you should report it immediately to an administrator, counselor, or other school official. They have a legal responsibility to respond.

Your Right to Be Yourself in School

Everyone has the right to be themselves in school—including you! Public schools are required to respect your gender identity and expression.

- **What you say:** The First Amendment to the U.S. Constitution gives all public school students the right to free speech and expression. This means you can talk and write about who you are and about issues relating to gender identity, gender expression, and being transgender. Your right to free speech doesn't mean that you can say whatever you want at any time; your speech is not protected if it disrupts class time, is meant

to encourage other students to break school rules, is obscene, or is a lie about someone and could damage their reputation. Your school can put some limits on where and when certain kinds of speech are allowed, but those limits must be reasonable and apply to everyone equally.

- **What you wear:** Your gender expression is protected by the U.S. Constitution, Title IX, and any state or local law that bans discrimination based on gender identity. This right to free expression includes your clothes. As long as what you wear would be appropriate if worn by other students, such as a skirt or a tuxedo, then you should be able to wear it if you're transgender or gender nonconforming. This also applies if the garment isn't something people usually associate with your gender. School dress codes have to treat all students equally.
- **Prom and other school events:** If you're a trans girl, can you run for homecoming queen? If you're a trans boy, can you wear a tuxedo to prom? Yes! The First Amendment and your right to equal protection grant you the right to express yourself at prom, homecoming, or similar school events. You're also protected in your choice of prom date by any state or local law that prohibits discrimination based on sexual orientation and gender identity.
- **Disruption:** Schools often use "disruption" as a reason to illegally censor students because the Supreme Court ruled that schools can only censor student expression if it disrupts educational time. But that often turns out to be a flimsy excuse that doesn't hold up in court. Under the law, disruption only happens when students are prevented from the opportunity to learn. For example, interrupting a teacher in class to give a political speech or holding a protest where you block access to a classroom would actually keep other students from learning. But simply wearing clothes that are

appropriate for your gender identity or talking about LGBT issues between classes or at lunchtime wouldn't keep anyone else from getting an education and are therefore not "disruptions." The fact that someone else might not like how you express yourself doesn't mean you're keeping other students from learning. And if someone gets upset or makes a scene about your gender identity or expression, the school cannot legally punish YOU for someone else's discomfort or bad behavior. So if your school censors you and says it's because you're disruptive, don't just take their word for it.

You Have the Right to Be Trans or Transition at School

Your right to be yourself in school includes the right to be transgender or to transition your gender in school. Unfortunately, there aren't yet clear rules in most places about how schools should accommodate students when they transition. There are often many obstacles to deal with, including your name and what pronouns to use when talking about you, restroom and locker room accessibility, and how official records classify you. We strongly suggest calling the ACLU or GLSEN to help you chart this course, and check out GLSEN and NCTE's model school policy for trans and gender nonconforming students at www.glsen.org/article/transgender-model-district-policy.

- **How to talk with your school about being transgender or transitioning:** The more support you have in talking to your school about being transgender, the better. If you can, involve your parents or guardians and your doctor, and reach out to supportive teachers and other staff. Explain to the school that it is legally obligated to create a safe learning environment for all students, including you, and that you have a constitutional right to express who you are in school. If your state or city bans discrimination in schools based on gender identity, make sure your school knows about the law.

■ **What should you ask your school to do?**

Your school should assess your needs on an individual basis, and you and your school should create a plan that works for you. In all cases, your school's goals should be to ensure your safety and support your emotional well-being so that you can learn and achieve your full potential. They can do this by acting to prevent harassment or bullying, making accommodations with respect to restrooms and lockers, and protecting your privacy by not revealing that you are transgender to others unless you have given them permission to do so. Your school should not be outing you to anyone.

■ **Can your school refuse to use your chosen name and pronouns?** Schools often claim that they can't honor the names or pronouns that correspond with a student's gender identity because they can only use students' legal names. This simply isn't true. There is no law that says schools can only use students' legal names. Your legal name probably has to appear on your transcript, but your school can use your chosen name and pronouns on just about everything else: class attendance rosters, your student ID, yearbook, report cards, etc. If you get a legal name change, your school should also update all your official records to match your new legal name.

■ **Privacy:** Your transgender status, legal name, and gender assigned at birth are all confidential information. If your school reveals that information to anyone without your permission, it could be violating federal law. For example, if you talk to the school nurse about your gender identity, the school has to keep that information private. Don't count on school officials to understand that. If you don't want them revealing your private information to others, tell them very clearly that you want your information kept private and that they shouldn't out you to other students, parents, or anyone else without your consent.

- **Sports:** There are many states that allow transgender high school students to compete in sports in accordance with their gender identity: California, Colorado, Connecticut, District of Columbia, Florida, Maryland, Massachusetts, Minnesota, Nevada, New Hampshire, Rhode Island, South Dakota, Vermont, Washington, and Wyoming. The remaining states have a variety of eligibility requirements. Some states require that trans students are prescribed hormone therapy in order to participate consistent with their gender identity, and other states have no guidelines at all.
- **Locker rooms and restrooms:** The U.S. Department of Education and the U.S. Department of Justice both say that transgender students have a right to use school restrooms and locker rooms that correspond with their gender identity. However, this is an area of the law that is rapidly evolving and there is still more work to be done.
- **Do you need to get a gender dysphoria diagnosis to be treated fairly by the school?** Students who are transgender sometimes have an easier time getting accommodations from their schools when they have an official gender dysphoria diagnosis from a doctor or therapist, especially if that doctor or therapist is willing to write a letter or talk to the school to say that recognizing a student's gender identity is medically necessary. However, you are not required to get such a diagnosis, and a diagnosis can be difficult to get particularly for students who are gender nonconforming or agender and don't identify as transgender.

If you are experiencing issues in any of the areas mentioned above or areas not mentioned in this guide, we strongly encourage students to contact the ACLU or GLSEN for support.

THE DETAILS

Important Laws

There are federal and state laws that protect you from discrimination and harassment based on your gender identity and expression. This isn't a complete list—there might be other laws out there that also protect you—but it's a good start.

- **U.S. and State Constitutions:** The U.S. Constitution and most State Constitutions guarantee you equal protection under the law, the right to freedom of speech and expression, and the right to privacy.
- **Title IX of the Civil Rights Act of 1964:** This federal law bans sex discrimination in schools that receive federal funding: all public schools, and certain private schools (usually colleges). Title IX protects trans and gender nonconforming students from discrimination, harassment, and bullying.
- **Family Educational Rights and Privacy Act (FERPA):** This is a federal law that says your educational records must be kept private. If your official transcript lists your legal name when you use a chosen name, or if your gender is different from what's listed in your official records, the school can't reveal that information to anyone but your parents/guardians (if you're under 18) or you (if you're over 18 or are enrolled in college). FERPA also says that if you've had your name or gender marker legally changed, you have a right to ask your school to correct that information on your records, even after you've graduated. The school has to have a hearing to discuss your request, and if they turn you down you can have a note explaining your objection permanently added to your record.

- **Health Insurance Portability and Accountability Act (HIPAA):** This federal law says that healthcare and mental healthcare providers are required to keep people's medical records private. What that means for students is that if you are talking about your gender identity with a school nurse or other healthcare provider who works for the school, they have to keep that information private.
- **Individuals with Disabilities Education Act (IDEA) and Section 504 of the Rehabilitation Act of 1973:** Under these two federal laws, some transgender and gender nonconforming students who meet certain eligibility requirements can have plans put in place at school that can be used to provide some accommodations. For example, if a student suffers from anxiety that is made worse when their gender identity isn't affirmed, one of these plans might be used to require that school staff respect the student's gender identity. Students and their families interested in exploring this should speak with an attorney who specializes in education or disability law.
- **State and local laws:** Your state, county, or city might have a law that prohibits discrimination, harassment, and/or bullying in school based on gender identity and expression. GLSEN has a number of state maps that illustrate where each state stands here: www.glsen.org/article/state-maps

Need Help?

If you think that your school is discriminating against you or is ignoring harassment or bullying against you, here are some things you can do:

- **To protect yourself and be in the best position to change your school's policies, be respectful and follow school rules.**
- **Document everything:**
 - Who was involved,
 - What happened,
 - Where it happened,
 - When it happened,
 - Who you reported it to,
 - Witnesses, if there were any.
- **Report everything to school officials:**

We know this can be scary, but it's important to report every incident of discrimination or harassment to school officials, like your principal or your district superintendent if you feel comfortable and safe doing so. In many states schools have to be officially put "on notice" about harassment in order for them to be held legally responsible for addressing it. Keep copies of everything that you give the school and any correspondence with the school. Take notes, including the date, about any conversations you have with school administrators.
- **File a complaint:** Your school is required to have a clear process for filing complaints of discrimination or harassment. Ask school administrators what the process is and follow it. The school must keep your identity confidential and cannot retaliate against you. You can also complain directly to your principal or superintendent. It's best if you do so in writing and keep copies of any correspondence with the school.

The U.S. Department of Education Office for Civil Rights also has a complaint process for discrimination and harassment. For an explanation about how to file a complaint, check out www2.ed.gov/about/offices/list/ocr/docs/howto.html.

GLSEN also has a document on how to file a complaint with the U.S. Department of Education Office for Civil Rights, available here: www.glsen.org/sites/default/files/ClaimYourRights-10.15_0.pdf

UPDATE: June 2016

On May 13, 2016, the U.S. Department of Education and Department of Justice issued guidance about how schools must treat transgender students under Title IX, which bans sex discrimination in schools that receive federal funding. The guidance makes it clear that discrimination against transgender students is a form of sex discrimination, and therefore illegal under Title IX.

Here's a summary of what the federal guidance says. If you're dealing with any of these situations at your school, please contact the ACLU! We may be able to help your school better understand its legal obligations to you.

Safety

Schools must provide a safe and nondiscriminatory environment for all students, including transgender students. Schools are legally required to address harassment that's based on sex – which includes harassment of transgender students.

Identification Documents, Names, and Pronouns

Schools must treat students consistent with their gender identity by addressing them according to their preferred names and gender pronouns.

And transgender students don't have to have a medical diagnosis or new driver's license or birth certificates – schools must respect students' gender identity.

Sex-Segregated Activities and Facilities

- **Restrooms and Locker Rooms:** Transgender students must be allowed to use facilities consistent with their gender identity. Schools can't require transgender students to use restrooms or locker rooms that don't correspond with their gender identity, and schools can't require transgender students to use single-user facilities. Single-user facilities can be made available to any students who want more privacy.
- **Athletics:** Schools can have sex-segregated sports teams, but transgender students must be allowed to play on the teams that correspond with their gender identity.
- **Single-Sex Classes:** If schools offer single-sex classes, such as physical education classes, they must allow transgender students to participate consistent with their gender identity.
- **Housing and Overnight Accommodations:** If schools provide separate housing on the basis of sex, such as dormitories on campus or hotel rooms during school group travel, transgender students must be allowed to stay in housing consistent with their gender identity. Schools can't require transgender students to stay in single-occupancy rooms or make them disclose any personal information about their bodies that other students aren't required to disclose. If a student requests a single-occupancy room, schools are allowed to grant that request.

■ **Other Sex-Specific Activities and Rules:**

Schools can't punish or exclude students for dressing or acting in ways that line up with their gender identity. Nor can schools punish or exclude students for not conforming to stereotypes about masculinity or femininity. Transgender students must be allowed to do such things as run for royalty at school dances or wear the clothes that correspond with their gender identity in their yearbook photos.

Privacy and Education Records

Schools must protect students' privacy related to their gender identity, including keeping information about students' birth name or sex assigned at birth private. Disclosing this information without the student's consent may violate the Family Educational Rights and Privacy Act (see page 5 of this brochure). A school can keep that information in its records, but those records should be kept confidential.

The entire federal guidance to schools can be viewed at:

<http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201605-title-ix-transgender.pdf>

Who to Contact for Help

ACLU Lesbian Gay Bisexual Transgender and HIV Project

212.549.2627

aclu.org/safeschools

The Project is a special division of the ACLU that leads the organization's nationwide advocacy to secure the rights of lesbian, gay, bisexual and transgender people. We won't ever talk to your school or anyone else without your approval, and any communication between you and the ACLU will be kept private.

GLSEN

212.727.0135

students@GLSEN.org

glsen.org

GLSEN the leading national education organization focused on ensuring safe and affirming schools for all students. Established in 1990, GLSEN envisions a world in which every child learns to respect and accept all people, regardless of sexual orientation or gender identity/expression. GLSEN seeks to develop school climates where difference is valued for the positive contribution it makes to creating a more vibrant and diverse community.

CONTACT US



American Civil Liberties Union

Lesbian Gay Bisexual Transgender and HIV Project

125 Broad Street, 18th Floor

New York, NY 10004

212.549.2627

aclu.org/safeschools

GLSEN[®]

110 William Street, 30th Floor

New York, NY 10038

212.727.0135

students@GLSEN.org

glsen.org



Current as of June 2016