



LGBTQI+ Students

BACKGROUND ON LGBTQI+ STUDENTS

Title IX protects LGBTQI+ students' right to access educational opportunities and activities without being subjected to bullying, harassment, or other discrimination on the basis of their sexual orientation or gender identity.

Despite protections under the law, LGBTQI+ students face significant barriers to equality at school because of their sexual orientation, gender identity, gender expression,

transgender or nonbinary status, or intersex status. A majority of LGBTQI+ students (59.1 percent) experience discriminatory policies and practices, such as being forced by dress and grooming codes to conform to sex stereotypes for their assigned gender at birth, being barred from forming a Gender-Sexuality Alliance (GSA) or similar peer support group, and being misgendered.¹ In 2019, more than eight in 10 LGBTQI+ students were verbally harassed and over one-third were physically harassed because of their sexual orientation, gender identity, or gender expression.² Schools often fail to respond effectively to anti-LGBTQI+

harassment or bullying: more than one in five LGBTQI+ students who reported being harassed or bullied to school staff were told to change their behavior by, for example, changing the way they dressed, and over 7 percent were disciplined after reporting their victimization to school staff³ (see **Discriminatory Discipline Based on Sex and Race** for more information).

Transgender and nonbinary youth experience more hostile school climates than their cisgender LGBTQ peers, with transgender girls reporting some of the highest levels of harassment and discriminatory school discipline.⁴ Among transgender adults who were out or perceived as transgender while in PK–12 schools, 13 percent were sexually assaulted as children, and transgender women were twice as likely to have been sexually assaulted while in PK–12 schools as transgender men and nonbinary people.⁵ In higher education, 23 percent of transgender and nonbinary students are sexually assaulted during their time in college.⁶ Relatedly, transgender students who have been banned from

using locker rooms and restrooms that matched their gender identity are significantly more likely to have been sexually assaulted during the previous 12 months.⁷

Anti-LGBTQI+ discrimination has devastating effects on LGBTQI+ students' ability to learn and feel safe in school. LGBTQI+ youth are more than four times more likely to attempt suicide than their non-LGBTQI+ peers.⁸ Although participation in extracurricular activities such as sports increases LGBTQI+ students' feeling of connection to their school and overall well-being, more than 40 percent of LGBTQI+ students avoid gym classes because they feel unsafe or uncomfortable, and one in 10 of them report that school officials had either prevented or discouraged them from playing sports because of their identity.⁹ Among transgender adults who were out or perceived as transgender in PK–12 school, 17 percent of them left or were pushed out of at least one school because of the anti-transgender mistreatment they faced.¹⁰

Developments Since 1972

There has been significant but uneven progress in preventing and effectively responding to discriminatory school policies and practices, and harassment and bullying of LGBTQI+ youth.¹¹ For years, courts have affirmed that discrimination on the basis of sexual orientation, gender identity, and transgender status are forms of sex discrimination.¹² In 2016, the Departments of Education and Justice under the Obama administration issued guidance addressing transgender students' Title IX civil rights protections,¹³ although this guidance was quickly rescinded by the Trump administration in 2017.¹⁴ However, in 2020, the Supreme Court

affirmed that sex discrimination in the workplace includes discrimination based on sexual orientation or gender identity.¹⁵ Since then, federal courts have increasingly held that under the same analysis, Title IX provides such protections, specifically including protections of transgender students' access to sex-separated restrooms and sports teams consistent with their gender identity.¹⁶ Similarly, the Department of Education under the Biden administration has cited *Bostock* in affirming that "Title IX's prohibition on discrimination 'on the basis of sex'... encompass[es] discrimination on the basis of sexual orientation and gender identity"¹⁷ and has issued new resources

DEVELOPMENTS SINCE 1972 *continued*

explaining that schools must address bullying and harassment on the basis of sexual orientation, gender identity, and intersex status.¹⁸ The Department's new resources also provide examples of discriminatory school practices that its Office for Civil Rights (OCR) can investigate, including school staff barring a transgender student from using the bathroom that aligns with their gender identity or preventing a high school girl from bringing her girlfriend to prom.¹⁹

However, the rights of LGBTQI+ students to participate equally in school are under attack across the country. Since March 2020, 12 states have banned transgender students—and in many cases, specifically transgender girls and women—

from playing on teams consistent with their gender identity,²⁰ even though research suggests that excluding transgender athletes is correlated with a decrease in sports participation among all girls and women (see [Gender Equity in Athletics](#)).²¹ In just the first three months of 2022, at least 18 states have introduced over 30 bills that prohibit or create barriers to LGBTQI+ inclusive teaching practices, books, or curriculum.²² For example, Florida's "Don't Say Gay or Trans" bill, signed into law in March 2022, prohibits teaching students about LGBTQI+ identities.²³ A number of states have also revived anti-transgender restroom bans, despite no evidence of any link between inclusive restroom policies and sexual assaults in restrooms.²⁴

Recommendations

The Department of Education should:

- Prioritize enforcement of Title IX protections for LGBTQI+ students and educators by coordinating full implementation of *Bostock* and other legal developments with the Department of Justice and all other agencies that enforce sex nondiscrimination laws and regulations, such as Title IX, Title X, the Fair Housing Act, the Equal Credit Opportunity Act, or the Fair Labor Standards Act. This includes protecting
- the right of LGBTQI+ students to learn in a safe, nondiscriminatory environment; to use names, pronouns, and identification documents consistent with their gender identity; to have access to sex-separated activities and facilities consistent with their gender identity; and to have their privacy protected in all education records.
- Condemn state and local governments' attacks on LGBTQI+ students' rights, and coordinate with the Department of Justice to submit amicus briefs in litigation challenging these harmful laws as contrary to Title IX's protections against anti-

RECOMMENDATIONS *continued*

LGBTQI+ discrimination. This includes reiterating that transgender athletes pose no threat to girls' and women's sports and that anti-transgender bans detract from the real and documented issues facing girls' and women's sports, like inadequate funding, high rates of sexual abuse, and fewer participation opportunities to play, especially for girls of color.

- Reiterate that OCR now accepts Title IX complaints alleging anti-LGBTQI+ discrimination, and reach out to students and families who previously filed such complaints with OCR only to have those complaints rejected or narrowed because of erroneous interpretations of the law.
- Utilize OCR's Civil Rights Data Collection to collect data that will provide a greater understanding of the experience of transgender and nonbinary youth in extracurricular settings such as clubs and athletics (see recommendations in **Gender Equity in Athletics**).
- Publicize key case resolutions for Title IX complaints involving anti-LGBTQI+ discrimination.
- Update Title IX guidance and best practices resources on topics such as policy review and development, school climate assessments, and federal funding that can support LGBTQI+ students' rights.
- Remind all stakeholders that preventing and remedying discrimination is a compelling government interest, and so any exceptions, including religious exemptions, must be narrowly construed so that federal funding is not used to subsidize discrimination, including against LGBTQI+ individuals.

Congress should:

- Pass the Safe Schools Improvement Act, which will ensure states adopt a proven strategy to prevent and address bias-based bullying in PK-12 schools by enumerating of race, color, national origin, sex (specifically including sexual orientation and gender identity), disability, and religion in locally tailored anti-bullying policies.
- Pass the Tyler Clementi Higher Education Anti-Harassment Act to require federally funded colleges and universities to adopt anti-harassment policies that prohibit and address harassment based on race, color, national origin, sex (specifically including sexual orientation and gender identity), disability, or religion.
- Pass the Equality Act to strengthen civil rights protections for LGBTQI+ youth and educators across multiple dimensions of their lives and experiences.
- Pass the Do No Harm Act to clarify that protections for religious freedom codified in the Religious Freedom Restoration Act do not create a safe haven for discrimination.
- Pass the LGBTQ Data Inclusion Act so that the experiences of all individuals, including LGBTQI+ students and educators, are accurately represented in federal data collection efforts and research can continue to inform best practices and effective, efficient uses of federal funding.
- Pass the STOP Bullying Act to establish a grant program that will support efforts, at the state level to establish anti-bullying task forces to study, address, and reduce bullying in elementary and secondary schools, and for other purposes.

- 1 GLSEN, *The 2019 National School Climate Survey: The Experiences of Lesbian, Gay, Bisexual, Transgender, and Queer Youth in Our Nation's Schools* 40-41 (2020) [hereinafter GLSEN Survey], available at <https://www.glsen.org/research/2019-national-school-climate-survey>.
- 2 GLSEN Survey, *supra* note 1, at 28.
- 3 *Id.* at 35-37.
- 4 See *id.* at 94-103.
- 5 National Center for Transgender Equality, *The Report of the 2015 U.S. Transgender Survey* 11, 134 (2017) [hereinafter NCTE Report], available at <http://www.ustranssurvey.org/reports>.
- 6 Association of American Universities, *Report on the AAU Campus Climate Survey on Sexual Assault and Misconduct*, at ix (Oct. 15, 2019), <https://www.aau.edu/key-issues/campus-climate-and-safety/aaucampusclimate-survey-2019>.
- 7 Diane Ehrensaft & Stephen M. Rosenthal, *Sexual Assault Risk and School Facility Restrictions in Gender Minority Youth*, 143 *Pediatrics* 1 (May 6, 2019), <https://pubmed.ncbi.nlm.nih.gov/31061221>.
- 8 The Trevor Project, *Facts About LGBTQ Youth Suicide* (Dec. 15, 2021), <https://www.thetrevorproject.org/resources/article/facts-about-lgbtq-youth-suicide>.
- 9 GLSEN, *LGBTQ Students and School Sports Participation* 2-3 (2021), <https://www.glsen.org/research/lgbtq-students-and-school-sports-participation>.
- 10 NCTE Report, *supra* note 5, at 12.
- 11 GLSEN Survey, *supra* note 1, at 129-141. Twenty-one states and the District of Columbia have passed laws prohibiting bullying and harassment in schools based on actual or perceived sexual orientation and gender identity. GLSEN, *Policy Maps* (last visited Apr. 15, 2022), <https://www.glsen.org/policy-maps>.
- 12 *Zarda v. Altitude Express, Inc.*, 883 F.3d 100 (2d Cir. 2018), *aff'd sub nom. Bostock v. Clayton Cty.* 140 S. Ct. 1731 (2020) (Title VII's prohibition on sex discrimination includes prohibition on sexual orientation discrimination); *Whitaker by Whitaker v. Kenosha Unified Sch. Dist. No. 1 Bd. of Educ.*, 858 F.3d 1034 (7th Cir. 2017) (Title IX likely violated by school barring transgender boy's access to boys' restroom); *Hively v. Ivy Tech Cmty. Coll. of Ind.*, ___ F.3d ___, 2017 WL 1230393 (7th Cir. 2017) (en banc) (Title VII's prohibition on sex discrimination includes prohibition on sexual orientation discrimination); *Schwenk v. Hartford*, 204 F.3d 1187, 1200-01 (9th Cir. 2000) (California's Gender Motivated Violence Act protects transgender individuals); *Henkle v. Gregory*, 150 F. Supp. 2d 1067 (D. Nev. 2001) (Title IX likely violated by failure to respond to harassment on the basis of sexual orientation). See also *Parents for Priv. v. Barr*, 949 F.3d 1210 (9th Cir. 2020) (cisgender students' privacy rights not violated by sharing bathrooms with transgender students); *Doe ex rel. Doe v. Boyertown Area Sch. Dist.*, 897 F.3d 518 (3d Cir. 2018) (same).
- 13 Department of Justice & Department of Education, *Dear Colleague Letter on Transgender Students* (issued May 13, 2016; rescinded Feb. 22, 2017), <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201605-title-ix-transgender.pdf>
- 14 Department of Justice & Department of Education, *Dear Colleague Letter* (Feb. 22, 2017), <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201702-title-ix.pdf>.
- 15 *Bostock v. Clayton Cnty.*, 140 S. Ct. 1731, 1747 (2020).
- 16 *Grimm v. Gloucester Cty. Sch. Bd.*, 976 F.3d 399, 401 (4th Cir. 2020) (Title IX protects transgender boy's access to boys' restroom); *B. P. J. v. W. Virginia State Bd. of Educ.*, No. 2:21-CV-00316, 2021 WL 3081883, at *7 (S.D.W. Va. July 21, 2021) (Title IX likely violated by Virginia law banning transgender girls and women from girls' and women's teams). See also *Adams ex rel. Kasper v. Sch. Bd. of St. Johns Cnty.*, 968 F.3d 1286 (11th Cir. 2020) (Title IX protects transgender boy's access to boys' restroom), *opinion vacated and superseded sub nom. Adams v. Sch. Bd. of St. Johns Cnty., Fla.*, 3 F.4th 1299 (11th Cir. 2021), reh'g en banc granted, 9 F.4th 1369 (11th Cir. 2021).
- 17 Department of Education, U.S. Department of Education Confirms Title IX Protects Students from Discrimination Based on Sexual Orientation and Gender Identity (June 16, 2021) <https://www.ed.gov/news/press-releases/us-department-education-confirms-title-ix-protects-students-discrimination-based-sexual-orientation-and-gender-identity>.
- 18 Department of Education, Office for Civil Rights, *Supporting Intersex Students: A Resource for Students, Families, and Educators* (Oct. 2021), <https://www2.ed.gov/about/offices/list/ocr/docs/ocr-factsheet-intersex-202110.pdf>; Department of Education, Office for Civil Rights, *Letter to Educators on Title IX's 49th Anniversary* (June 23, 2021), <https://www2.ed.gov/about/offices/list/ocr/correspondence/stakeholders/educator-202106-tix.pdf>; Department of Education, Office for Civil Rights, *Confronting Anti-LGBTQI+ Harassment in Schools: A Resource for Students and Families* (June 23, 2021) [hereinafter 2021 OCR Resource], <https://www2.ed.gov/about/offices/list/ocr/docs/ocr-factsheet-tix-202106.pdf>; Department of Education, Office for Civil Rights, *Supporting Transgender Youth in School* (June 23, 2021), <https://www2.ed.gov/about/offices/list/ocr/docs/ed-factsheet-transgender-202106.pdf>.
- 19 2021 OCR Resource, *supra* note 18, at 1.
- 20 GLSEN, *Gender Affirming and Inclusive Athletics Participation* (Nov. 2021), <https://www.glsen.org/activity/gender-affirming-inclusive-athletics-participation>.
- 21 Center for American Progress, *Fair Play: The Importance of Sports Participation for Transgender Youth* 14-16 (Feb. 8, 2021), available at <https://www.americanprogress.org/issues/lgbtq-rights/reports/2021/02/08/495502/fair-play>.
- 22 E.g., H.B. 9, Reg. Sess. (Ala. 2022); H.B. 322, Reg. Sess. (Ala. 2022); S.B. 7, Reg. Sess. (Ala. 2022); H.B. 2011, 55th Leg., 2d Reg. Sess. (Az. 2022); H.B. 2161, 55th Leg., 2d Reg. Sess. (Az. 2022); H.B. 2285, 55th Leg., 2d Reg. Sess. (Az. 2022); H.B. 2495, 55th Leg., 2d Reg. Sess. (Az. 2022); S.B. 1045, 55th Leg., 2d Reg. Sess. (Az. 2022); H.B. 1557, Reg. Sess. (Fla. 2022); S.B. 1834, Reg. Sess. (Fla. 2022); H.B. 1158, 156th Gen. Assemb., Reg. Sess. (Ga. 2022); H.B. 1178, 156th Gen. Assemb., Reg. Sess. (Ga. 2022); S.B. 449, 156th Gen. Assemb., Reg. Sess. (Ga. 2022); S.B. 613, 156th Gen. Assemb., Reg. Sess. (Ga. 2022); H.B. 5505, 102d Gen. Assemb., Reg. Sess. (Ill. 2022); H.B. 1040, Reg. Sess. (Ind. 2022); H.B. 1134, Reg. Sess. (Ind. 2022); S.B. 167, Reg. Sess. (Ind. 2022); H.F. 2053, 89th Gen. Assemb., Reg. Sess. (Iowa 2022); H.B. 837, 71st Leg., Reg. Sess. (La. 2022); H.B. 1474, 101st Gen. Assemb., 2d Reg. Sess. (Mo. 2022); H.B. 1752, 101st Gen. Assemb., 2d Reg. Sess. (Mo. 2022); H.B. 1995, 101st Gen. Assemb., 2d Reg. Sess. (Mo. 2022); S.B. 2679, Reg. Sess. (Miss. 2022); H.B. 1431, Reg. Sess. (N.H. 2022); S.B. 1142, Reg. Sess. (Okla. 2022); S.B. 1470, Reg. Sess. (Okla. 2022); H.B. 616, 134th Gen. Assemb., Reg. Sess. (Ohio 2022); H.B. 7539, Reg. Sess. (R.I. 2022); H.B. 4605, 124th Sess. (S.C. 2022); H.B. 800, 112th Gen. Assemb., Reg. Sess. (Tenn. 2022); H.B. 2835, 112th Gen. Assemb., Reg. Sess. (Tenn. 2022); S.B. 1216, 112th Gen. Assemb., Reg. Sess. (Tenn. 2022); S.B. 157, 64th Leg., Reg. Sess. (Utah 2022); H.B. 1126, 161st Gen. Assemb., Reg. Sess. (Va. 2022); S.B. 656, 161st Gen. Assemb., Reg. Sess. (Va. 2022).
- 23 H.B. 1557, Reg. Sess. (Fla. 2022).
- 24 See e.g., H.B. 1126, 161st Leg., Reg. Sess. (Va. 2022). Stephanie Ebbert, Study finds no link between transgender rights law and bathroom crimes, *Boston Globe* (Sept. 12, 2018), <https://www.bostonglobe.com/news/politics/2018/09/12/study-refutes-link-between-restroom-crime-and-transgender-access/5am4LMIIHecGvJTW4MBqN/story.html>.